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ESSAYS

ON THE

PUNISHMENT OF DEATH.

BY CHARLES SPEAR,

AUTHOR OF 'TITLES OF JESUS;' 'ESSAYS ON IMPRISONMENT FOR DEBT,' ETC.

I shall ask for the abolition of the Penalty of Death until I have the infallibility of human judgment demonstrated to me. The Punishment of Death has always inspired me with feelings of horror since the execrable use made of it during the former Revolution.

LAFAYETTE.

EIGHTH EDITION.

BOSTON:
PUBLISHED BY THE AUTHOR.

LONDON:
JOHN GREEN, 121 NEWGATE STREET.

1844.

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IS

AFFECTIONATELY DEDICATED

TO

THOMAS C. UPHAM,

**PROFESSOR OF MENTAL AND MORAL PHILOSOPHY IN BOWDOIN
COLLEGE, ME.,**

AS

A TOKEN OF RESPECT AND ESTEEM

FOR HIS

SYMPATHY FOR THE CRIMINAL.

P R E F A C E .

THEODORIC THE GREAT, who was at the head of the Gothic monarchy in Italy, is said to have governed his subjects by the following excellent maxim :—‘ It is the duty of a benign prince to be disposed to *prevent*, rather than to *punish* offences.’ Had all rulers been governed by such a principle, there would have been no necessity for works on the subject of the Punishment of Death. Crimes would have ceased, and the scaffold would long since have passed into oblivion. But few have understood the principle, and fewer still have carried it into practical operation. Such being the condition of society, the author has felt impelled, from a sense of duty, to complete a work expressly devoted to a consideration of the penalty of death. For years, he has thought deeply upon it. A few months ago, by the advice of a few judicious friends, he was induced to take up the subject anew. The labor, at first, appeared somewhat easy to be accomplished, but, on a closer investigation, the subject was found to embrace an immense field, and to lie at the very foundation of the whole social fabric ; to be, in fact, the very starting point for every moral reform. For, of what avail will it be for any community to expect to prosper, unless the Sacredness of Human Life is first admitted ? Our object has been to establish this great truth, that the criminal, though debased, yet, is a man and a brother ; and, as such, deserves human sympathy. We have sustained this by argument, and by a variety of incidents, all showing that there is a chord in every soul that can be made to vibrate.

The work is divided into two parts. One, containing facts and arguments drawn from history and observation; the other, founded on the Scriptures.

The author intended to have presented other subjects which seem to have a close connection with that of the Punishment of Death. He actually sent forth a prospectus, in the fifteenth edition of his work on the 'Titles of Jesus,' to that effect. Moral Insanity; the Treatment of Prisoners; the Degeneracy of the Press, respecting Criminal Reports; all these, and other kindred topics, presented their claims. But he found it impossible, in a work on so limited a plan, to do justice to either; especially Moral Insanity; a subject involving many facts, and leading to a series of metaphysical reasoning, and to an investigation of a variety of mental phenomena. Several friends advised him to direct his whole effort, first, to the abolition of the Punishment of Death; then, in some future labor, to consider such other topics as seemed most intimately connected.

During our labor, we have been cheered and animated by a few choice friends, to whom we feel largely indebted. Among them, we must place ROBERT RANTOUL, Esq. On learning our intention to write a work on this subject, he kindly offered his aid, and sent us many valuable English publications. All who know anything of the history of legislation in Massachusetts, know how much the public are indebted to him for his invaluable reports.

We have also freely availed ourselves of the labors of J. O'SULLIVAN, Esq., of New York. He has produced one of the most valuable reports ever issued from any legislative body.

We cannot express ourselves too warmly to another friend, for the incitements received on this subject, as well as on another, somewhat allied—that of war. During two journeys to Maine, we have had the pleasure of interviews with Professor UPHAM, the true friend of humanity, whether *debased by Crime*, trodden down by Slavery, or crushed by

War. Indeed, we know not that we should have brought out our work at the present time, had it not been for his encouragement. In our progress, we have frequently availed ourselves of the labors of his mind, which are beautifully embodied in his *Manual of Peace*, a work which, for beauty of style, we have never seen surpassed.

In writing the essay, entitled, 'Dangerous to Liberty,' we were peculiarly fortunate in meeting with a most thrilling speech, by O'CONNELL, the 'great agitator,' delivered before the London Society for the Diffusion of Information on the subject of Capital Punishment. His voice came to us in solemn tones, across the Atlantic; for, by a singular coincidence, at the very time when we were referring to his speech, he was arraigned upon charges (which occupied seventy hours in reading) for treason; a capital offence in every government on earth; an offence considered the most heinous and aggravating of all others, by politicians; an offence which seems to hold about the same rank among them that heresy does among religionists. No crime is more indefinite. For no one has blood flowed more freely. How finely is this melancholy truth brought out, in reference to the French Revolution, by Lafayette, in the motto upon our title page! The death-penalty has fallen heavily upon the hero, the martyr, and the scholar! How many have fallen beneath the bloody axe! With minds far-reaching beyond their age, misunderstood and unappreciated, they have perished. And what a melancholy chapter might be written on the fate of human discoverers! And what a brilliant chapter, too; all sparkling with facts in human progress!

In the course of our examination of the Scriptures, we spent much time in bringing out the number of offences in the Code of Moses. In the wide range which critics have taken, we found no one who had collated and arranged the offences with reference to their number. Some may think *that we have gone too far*. An objection may be raised *that*

the expression, 'cut off,' does not mean death in a capital form. A reference to a single passage, respecting the Sabbath, found in Exodus xxxi. 14, will confirm the view we have adopted.

To make our work complete, we devoted much time and labor in ascertaining the number of capital offences in the code of the Union, and the codes of the several States. We were kindly assisted here by an attorney of our city, whose name we have mentioned with pleasure, in the notes to the various codes, in the first Appendix. Such an arrangement is not to be found in any work that has come within our own observation. It will be of great service to the reader; enabling him to turn, at any moment, to see what is a capital offence in the code of the Union, or in either of the twenty-six states of our republic. It may tend to the prevention of crime, by thus presenting the law, in this simple form, to the public eye.

The author has done what he could, considering the state of his health, his opportunities, and the limited plan which he was obliged to mark out, that his work might be within the means of the public generally. His own mind has been informed, and his heart more deeply interested in the general cause of benevolence. And his fervent prayer is, that the work may be a blessing to others, and be a means, at least, of bringing one wanderer back from crime and degradation to the path of righteousness and truth; ever remembering, 'that joy shall be in heaven over one sinner that repenteth more than over ninety and nine just persons that need no repentance.'

Boston, January 1, 1844.

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PART I.

HISTORY AND OBSERVATION.

ESSAYS, &c.

I.

SACREDNESS OF HUMAN LIFE.

Suicide—Expediency.

'The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative when they transfer it to human hands.' DR. RUSH.

Our first inquiry will be respecting the authority for Capital Punishment. We do not intend to take an extensive view of this part of our subject, for there are many other considerations which would be more interesting to the general reader.

The reader should remember that the great object of our labor will be to show the injustice of Capital Punishments. The disposal of a prisoner is a matter for a work on another plan. Take away first this cruel, sanguinary law, and then let benevolence and justice do their work.

We wish to establish, clearly, that life is sacred, inalienable,—a gift from Heaven. And even our Declaration of Rights admits this great truth. Settle this great question forever, and then society will begin to improve; humanity will be respected, and the criminal will be looked on with pity as a man and a brother.

It has been said, that society is a compact, and that each individual must give up some portion of his

rights to the government under which he lives. Mr. Rantoul contends, however, that there is no such compact. 'It belongs to those,' he says, 'who claim for society the rightful power of life and death over its members, as a consequence of the social compact, to show in that compact the express provisions which convey that power. But it cannot be pretended that there are, or ever were, such provisions. It is argued, as boldly as strangely, that *this right is to be implied from the nature of the compact*. It may seem unnecessary to reply to such an assumption; but it has often been advanced, and for that reason deserves our notice. In point of fact, there is no social compact actually entered into by the members of society. It is a convenient fiction—a mere creature of the imagination—a form of expression often used to avoid long and difficult explanations of the real nature of the relation between the body politic and its individual members. This relation is not, strictly speaking, that of a compact. It is not by our voluntary consent that we become, each one of us, parties to it. The mere accident of birth first introduced us, and made us subject to its arrangements, before we were, in any sense, free agents. After we had grown to the age of freemen, and had a right to a voice in the common concerns, what alternatives had we then left? Simply these. Resistance to the social compact, as it is called, under the prospect of producing ruin, confusion, anarchy, slaughter almost without bounds, and finally ending in a new form of the social compact, much more objectionable than that which had been destroyed, if the resistance should prove successful: should it fail of success, incurring the penalty of treason, a cruel death, to such as have not been fortunate

enough to fall in the field of battle. Flight from the social compact, that is to say, flight not only from one's home, friends, kindred, language and **country**, but from among civilized men, perhaps, it may **be said**, from the fellowship of the human race. Or, lastly, submission to the social compact, as we find it, taking the chance of our feeble endeavors to amend it, or improve the practice under it. To this result, almost every man feels compelled by the circumstances in which he finds himself; circumstances so strong as to force from an inspired apostle the declaration, though he wrote under the tyrant Nero, a monster of depravity, "the powers that be are ordained of God; whosoever therefore resisteth the power, resisteth the ordinance of God; and they that resist shall receive unto themselves damnation." "

But admitting all that the most strenuous advocates contend for, respecting the social compact, the question returns. Can the individual give to society a right which was never conferred on him by his Creator? Has any one a right to take his own life? 'Every Christian,' says Mr. Rantoul, 'must answer, no. A man holds his life as a tenant at will,—not indeed of society, who did not and cannot give it, or renew it, and have, therefore, no right to take it away,—but of that Almighty Being whose gift life is, who sustains and continues it, to whom it belongs, and who alone has the right to reclaim his gift whenever it shall seem good in his sight. A man may not surrender up his life until he is called for. May he then make a contract with his neighbor, that in such or such a case his neighbor shall kill him? Such a contract, if executed, would involve the one party in the guilt of suicide, and the other in the guilt of murder. If a man may not say to his next neighbor,

“When I have burned your house in the night time, or wrested your purse from you on the highway, or broken into your house in the night, with an iron crow, to take a morsel of meat for my starving child, do you seize me, shut me up a few weeks, and then bring me out and strangle me; and in like case, if your turn comes first, I will serve you in the same way,”—would such an agreement between ten neighbors be any more valid or justifiable? No. Nor if the number were a hundred, instead of ten, who should form this infernal compact, nor if there should be six hundred thousand or seven hundred thousand, or even fourteen millions, who should so agree, would this increase of the number of partners vary one hair’s breadth the moral character of the transaction. If this execution of the contract be not still murder on the one side, and suicide on the other, what precise number of persons must engage in it, in order that what was criminal before may become innocent, not to say virtuous; and upon what hitherto unheard of principles of morality is an act of murder in an individual, or a small corporation, converted into an act of justice whenever another subscriber has joined the association for mutual sacrifice? It is a familiar fact, in the history of mankind, that great corporations will do, and glory in, what the very individuals composing them would shrink from or blush at; but how does the division of the responsibility transform vice into virtue, or diminish the amount of any given crime? The command, “Thou shalt not kill,” applies to individual men as members of an association, quite as peremptorily as in their private capacity.’

Suicide has been maintained by some writers, both in ancient and modern times. We have met with a French author, who, to sustain it, offers the following

View: 'I do not,' says he, 'regard as a very serious objection that pretended prohibition of suicide, whence it has been argued that we cannot dispose of human life. After Rousseau's admirable letters on suicide, he must be a bold man who would venture an off-hand opinion on such a serious question.

'When my coat straightens me, I throw it off. If my house does not suit me, I quit it. Why should I not abandon life?

'It is true, the savage may starve, or freeze, rather than kill himself; but yet he kills his venerable father, with his own hand, to save him from suffering under a decaying constitution, and the pangs of a lingering death.

'Besides, to start from a questionable point to establish the point in question, is only to settle one doubt by another.

'The objection is a relic of the middle age, when the law punished suicide as a crime. Those punishments have been erased from our statutes. We cannot, therefore, admit that a principle which has been excluded from our criminal legislation, should continue to constitute one of its elements.'*

This reasoning will appear very singular to an American legislator. The author evidently felt the force of the objection, that man, having not the right

* 'Je ne considère pas comme une objection bien grave la prétendue défense d'attenter à notre propre vie, d'où l'on conclut que nous ne pouvons pas davantage disposer de celle de nos semblables.

'Lorsqu' on a lu les admirables lettres de Jean Jacques sur le suicide, il devient téméraire de trancher légèrement une aussi grave question.

'Quand un vêtement me gêne, je le quitte; quand une habitation m'incommode, j'en sors. Pourquoi ne pourrais-je pas sortir de la vie?

'On parle du sauvage, qui souvent meurt de faim, de froid, et ne se tue point lui même.

'La chose est possible; mais on oublie que ce même sauvage donne,

to take his own life, could not give it to another; and to meet it, adopts this strange view. He even goes farther, and endeavors to show that not only suicide is justifiable, but that all religious ideas must be banished from the mind, before we can consistently advocate Capital Punishment. 'It has been objected, that there is atheism in thus cutting off the probationary state of a soul. I should answer this sufficiently, if I should only quote this fundamental maxim of our legislation; "THE LAW OUGHT TO BE ATHEISTICAL." This astounding proposition M. Urtis thus explains in a note: "Not that I would HERE preach atheism. I only contend, that as the law recognizes religious freedom, it cannot assume as a fundamental principle the doctrines of any particular faith. * * It must regard only the general good of society. No one can tell where such a course will end, if the necessities of society are to be subjected to all the requisitions of theology." *'

de sa propre main, la mort à son vieux père, pour lui épargner les souffrances de la caducité, les tourmens d'une longue agonie!

'Au surplus, partir d'un point contestable pour établir le principe contesté, n'est ce pas prouver la question par la question?

Cette objection est une réminiscence du moyen âge. Alors la loi portait des peines contre le suicide. Elles ont été effacées de nos Codes. On ne peut donc admettre, comme élément de législation criminelle, un principe qui en a été banni.—De la Peine de Mort, 2—3.'

* 'Il y a de l'Athéisme, ajoute-t-on, dans ce coup de hache qui enlève un âme au repentir.

'Je pourrais pour toute reponse, me borner à citer cette maxime, *base de notre droit public*, suivant laquelle LA LOI DOIT ETRE ATHEE. He adds in a note: Non que je veuille ICI precher l'Atheisme. Je veux dire seulement que la loi, admettant la liberté des cultes, ne doit prendre pour base les dogmes d'aucune croyance particuliere. * * Elle ne doit considérer que l'utilité générale de la société. On n'en finirait plus s'il fallait subordonner les nécessités sociales à toutes les exigences de la theologie. De la Peine de Mort, 26—27.'

We do not mean to say that those who advocate Capital Punishment are atheistical in their views; but we do mean, that, to be consistent, they must admit suicide to be justifiable; for, generally, they contend strictly for human governments, and that, becoming members of a government, we give up a portion of our rights. 'When we surrendered to society the smallest possible portion of our liberty, to enable us the better to retain the aggregate of rights which we did not surrender, did we concede our title to that life with which our Creator has endowed us? Is it to be conceived that we have consented to hold the tenure of our earthly existence at the discretion or the caprice of a majority, whose erratic legislation no man can calculate beforehand? While our object was to preserve, as little im-

We should think, from the following statistics of suicide in France, that the people were not very slow to carry the reasoning of M. Urtis into practice :—

'INCREASE OF SUICIDES IN FRANCE.—It appears, from official documents contained in recent Paris papers, that the number of suicides in France increases each year. In the year 1839, they amounted to one thousand seven hundred and forty-seven, being one hundred and seventy-one more than in 1838, three hundred and four more than in 1837, and four hundred and seven more than in 1836. The department of the Seine figures for four hundred and eighty-six, nearly one fifth of the entire. Six hundred and eighty-eight females are returned among the suicides. Each period of life, from infancy to old age, has paid its tribute to this malady. There are two children of from eight to nine years of age, two of eleven, one of twelve, two of thirteen, three of fourteen, nine of fifteen, one hundred and forty-seven of sixteen to twenty-one, three hundred and thirty-five of sixty, one hundred and eighty-nine of seventy, and forty-one of eighty. The means most frequently used to destroy life are submersion and strangulation. Nine hundred and fifty-eight individuals drowned themselves, eight hundred and sixteen hung themselves, one hundred and eighty-nine *suffocated themselves with the fumes of charcoal*, which appears to be the principal mode resorted to by the Parisians.'

paired as might be possible, all our rights, which are all of them comprehended in the right to enjoy life, can we have agreed to forfeit that right to live while God shall spare our lives, which is the essential precedent condition of all our other rights? Property may be diminished, and afterwards increased. Liberty may be taken away for a time, and subsequently restored. The wound which is inflicted may be healed, and the wrong we have suffered may be atoned for; but there is no Promethean heat that can rekindle the lamp of life, if once extinguished. Can it be, then, that while property, liberty, and personal security are guarded and hedged in on every side, by the strict provisions of our fundamental constitution, that life is unconditionally thrown into the common stock, not to be forfeited in a specific case, agreed upon beforehand at the organization of our society, but in all such cases as the popular voice may single out and make capital by law? Have we entered into any such compact?

‘*The burthen of proof* is wholly upon those who affirm that we have so agreed. Let it be shown that mankind in general, or the inhabitants of this Commonwealth in particular, have agreed to hold their lives as a conditional grant from the state. Let it be shown that any one individual, understanding the bargain, and being free to dissent from it, ever voluntarily placed himself in such a miserable vassalage. Let there, at least, be shown some reason for supposing that any sane man has, of his own accord, bartered away his original right in his own existence, that his government may tyrannize more heavily over him and his fellows, when all the purposes of good government may be amply secured at so much cheaper a purchase. In no instance can this preposterous sacri-

It must be implied. It must be shown by positive proof that it has been made, and until this is undeniably established, the right of life remains among those reserved rights which we have not yielded up to society.'

Beccaria has some good remarks on this subject. '*What right, I ask, have men to cut the throats of their fellow-creatures?* Certainly not that on which the sovereignty and laws are founded. The laws, as I have said before, are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all goods, life? If it were so, how shall it be reconciled to the maxim which tells us, that a man has no right to kill himself? which he certainly must have, if he could give it away to another.'

'The case of a civil ruler and his subject,' says the author of the essays of Philanthropos, 'is much like that of a father and his minor son. If the son behave himself unseemly, the father may correct him. If, after all due admonition and corrections, the son shall prove to be incorrigible, the father may expel him from his family; and he may disinherit him; but he must not kill him. All civil governments originated in families. The father of the family had a natural right of jurisdiction over his descendants, and an acquired right on account of the support and protection afforded them during their infancy and childhood; and, by the alliance or union of many families, it became national. But the stream cannot rise higher than the fountain. If no father have the right to inflict the punishment of

death on his minor son for any crime, then a million of fathers would have no right, by themselves or their representatives, to do it. In such case, numbers, power, and substitution, considered either severally or jointly, cannot create or increase a right. And I humbly conceive that the rightful jurisdiction of the civil magistrate over any member of the community never can rise higher than that of a father over his son during his minority.'

'We maintain,' says Professor Upham, 'that the state, in inflicting Capital Punishments, exercises a power which was never granted it. And for this simple reason, that individuals, who are the source of all the authority lodged in the state, have no power to grant it. No man can grant to another what he does not possess himself; and as no man has the right to take away his own life, (a principle, upon which writers on moral philosophy, and mankind generally, are more universally agreed than upon almost any other,) it follows that no man has the right to authorize another to take away his life. So that the infliction of Capital Punishments, examining the subject in this direction, is undoubtedly to be regarded as usurpation and tyranny.'

We have thus looked at one side of our subject. We present now the views of a writer who takes the ground that society has the right to take life:

'It is said,' he observes, 'by some writers on this subject, that no man has yielded to others, or to the government under which he lives, the right to take away his life; that it is a measure of legal violence, and not the act of his own consent or free will; that it usurps the prerogative of Heaven. Stretch the principle a little farther, and allow us to ask in return,

whether any villain ever gave up of his own free will the right to imprison him, or to confiscate his property; and the argument, thus carried to its full extent, annihilates every species of punishment. But the laws, the government, do not ask his consent. Their only query is, Does the safety of the public call for a capital sentence? If it does, they pronounce it; if it does not, his life is spared.*

It would seem, by this reasoning, that we are wholly to be governed by expediency, one of the most dangerous principles ever adopted in moral philosophy. 'When the advocates of sanguinary examples are driven from every position of morality, reason, and religion, they entrench themselves behind that of *expediency*. But *expediency* was the doctrine of PILATE, who, on that principle, which is so much in acceptance among modern statesmen, put ONE, in whom he "found no fault," to death, in preference to the murderer *Barabbas*. There is no crime in statesmanship, no vice in legislation, no error in the administration of justice, that "*expediency*" cannot sanction! It is the doctrine invented by knaves to impose upon fools. When men abandon the immutable principles that distinguish right from wrong, and tell us that it is *expedient* to do a thing which it is not *right* to do, we think very contemptuously of such men's understandings, or very unfavorably of their hearts: for either folly or dishonesty is the source of their actions.'

'The question then returns,—~~where~~ does society get its right of putting men to death? And the answer is, Nowhere. This pernicious system is to be regarded as one of the thousand usurpations, that have been intro-

* Christian Spectator, Sept., 1830—p. 509

duced by mistake or by cruelty, and which are rendered venerable and sacred by lapse of time. Like the use of the rack, the trial by ordeal, the enslavement or destruction of prisoners taken in war, the poisoning of wells and fountains, and other pernicious and unlawful practices, which were once authorized, and perhaps considered essential to the existence of society, the time is coming, when it will be condemned by the good judgment and the humane feelings of mankind, and wholly renounced as both inexpedient and wrong.'

We sincerely believe that the only doctrine that will ever secure to man his just rights, will be that of the Inviolability of Human Life. We must begin here. When this is once felt and understood, we may expect an end to tyranny and oppression throughout the world. Life is sacred. It belongs to Him who gave it. It is in the hands of its Author. The voice of God has sent forth his perpetual and universal mandate. 'THOU SHALT NOT KILL.' This voice speaks from the very depths of our natures, 'THOU SHALT NOT KILL!' That strange union of spirit and body which composes this fearful and unfathomable mystery of our humanity is not to be severed, neither by the hand of a human government, nor by the hand of the individual; '*for in the image of God made He man.*' And that image must not be marred. It must be respected, and tenderly treated, even in the murderer's own person, though he be crimsoned over with blood. 'Ah!' exclaims M. Lucas, 'the best means of recalling to the guilty culprit the sense of the sacred character of the duty he has violated, is it not to respect it in his own person? When he shall behold the society abstaining from putting him to death—him, the murderer—he will then comprehend that man is indeed

forbidden to attack the life of his fellow-man, and then alone will he conceive the thought of all the sanctity of the duty he has violated, all the enormity of the crime he has committed.'

'Let the idea of crime, horrible crime,' says Mr. Rantoul, in his report to the Massachusetts Legislature, in February, 1836, 'be indissolubly and universally associated with the voluntary and deliberate destruction of life under whatever pretext. Whoever strengthens this association in the public mind, does more to prevent murders than any punishment, with whatever aggravation of torture, can effect through fear. The denomination of Friends have always been educated in this idea, and among them murders are unknown. The strongest safeguard of life is its sanctity; and this sentiment every execution diminishes.'

We rejoice to find that we are not alone on this subject. A glorious company is rising up in different portions of the civilized world, whose talents and virtues will adorn this great doctrine, and hasten its establishment throughout the habitable globe.

'For the honor of humanity it can be said, that in every age and country, there have been found persons in whom uncorrupted nature has triumphed over custom and law. Else why do we hear of houses being abandoned near to places of public execution? Why do we see doors and windows shut, the days and hours of criminal executions? Why do we hear of aid being secretly afforded to criminals to mitigate or elude the severity of their punishments? Why is the public executioner of the law a subject of such general detestation? These things are latent struggles of reason, or rather the secret voice of God himself, speaking in the

human heart, against the folly and cruelty of public punishments.*

Let philanthropists then take courage, and go forward in the great and blessed work of ameliorating the condition of the criminal, by doing away those terrible punishments which have only brutalized and hardened the human heart. It is a great work, and for our encouragement we have the words of the Great Teacher. 'Inasmuch as ye have done it unto one of the least of these, my brethren, ye have done it unto me.' †

* *Essays, Literary, Moral and Philosophical.* By BENJAMIN RUSH M. D. p. 162, Philadelphia, 1798. The writer finds this language, and that of the motto at the head of this essay, ascribed by some writers to Dr. Franklin. A careful examination of the works of both Rush and Franklin has enabled the writer to discover the error. There is but a single essay in Franklin's works on penal jurisprudence. The essay from which our quotation was made, was read at a society for promoting Political Inquiries, convened at the house of Dr. Franklin, March 9, 1787. We mention this fact, because we find that even Livingstone himself committed the error to which we have alluded.

† *Matt. xxv. 40.*

ESSAY II.

REVENGEFUL.

Story of a horse-stealer—Punishment and revenge—Confession of a magistrate—Reformation of a boy guilty of highway robbery—Sympathy for the degraded.

‘Government has not been slow to punish crime, nor has society suffered for want of dungeons and gibbets. But the prevention of crime, and the reformation of the offender, have nowhere taken rank among the first objects of legislation.’

CHANNING.

DR. FRANKLIN relates the story of a horse-stealer, who, on being asked by his judge what he had to say why sentence of death should not be passed, replied, ‘that it was hard to hang a man for *only* stealing a horse.’ ‘Man,’ replied the judge, thou art not to be hanged *only* for stealing a horse, but that horses may not be stolen.’ This anecdote shows the true nature of Capital Punishment. The good of the offender is always unthought of in its infliction. One great object is entirely disregarded.

It may be said of our penal code generally, that it is rather *retrospective* than *prospective*. The future good of the criminal is not considered. The idea is well expressed in our motto, by Channing. Our prisons should be places of emendation; not mere gloomy cells, but hospitals to heal the moral disorders of the soul. Until this is done, we cannot expect any beneficial results from the confinement of the culprit.

‘When we hear of the perpetration of a crime, we are *so apt to think only of punishment. What suffering*

can be too great for such a wretch! is the exclamation which bursts from almost every lip. The sentiment is worthy of the unlovely doctrines which produce and cherish it. A more benevolent system would excite a different feeling. What can be done to reclaim the unhappy offender? What means can be taken to enlighten his mind, and meliorate his heart? What discipline is best adapted to his mental and moral disorder? What will lead him back to virtue and to happiness most speedily, and with the least pain? Such is the feeling of the mind enlightened by the generous doctrine we have endeavored to establish. Could it but enter the heart of every legislator; did it but guide the hand that constructs the cell of the poor captive; did it apportion his pallet of straw and his scanty meal; did it determine the completeness and the duration of his exclusion from the light of day and the pure breeze of heaven; did it apply his manacles, (if, disdaining to treat a human being with more indignity than is practised towards the most savage brutes, it did not dash his chains to the earth,) what a different aspect would these miserable mansions soon assume! What different inhabitants would they contain! Prisons would not then be the hot-beds of vice, in which the youthful offender grows into the hardened criminal, and the want of shame succeeds the abolition of principle, but hospitals of the mind, in which its moral disorder is removed by the application of effectual remedies.'

That Capital Punishment has no good moral effect by way of example, will be shown in the essay on the Influence of Public Executions.

A very able writer has given us the following definitions of punishment and revenge. According to hi

reasoning, both bear the following definition:—‘The infliction of pain in consequence of the violation or neglect of duty.’ The question then arises, where is the difference? ‘The real difference consists not in the pain and suffering endured, nor in the person or law that inflicts it, but in the motive with which it is administered.’ ‘Punishment is prospective, referring to future consequences; but revenge is retrospective, having reference only to a past offence.’

Punishment by death originated among savages. Among them, however, it was called by its right name, revenge. ‘In the savage state, the murderer is considered the lawful prey of any relative or friend of the slain, who may please to take revenge; but the community takes no part in the transaction.’ Now, society pursues the murderer for the same object. Revenge is still the same, whether inflicted by the hand of the savage, or by the most enlightened government.

The great object seems to be to inflict evil merely because an evil has taken place. We do not say that all view the matter in this light, but that the community do generally. For, what are the expressions that we hear when persons are convicted for murder? ‘Hang them! they deserve it! They did not spare—let them not be spared! Let them die!’ ‘Die and *be damned*,’ was the recent answer of one. ‘To say, as some do, that we have a right to take away the life of a human being, because he or she hath taken away the life of another, is a fallacious mode of reasoning. It appears like justifying one crime by another. It is comparing ourselves with ourselves; not with the law of God, which is the standard of moral rectitude. Let us apply this sophistical mode of reasoning to some of the other commandments, say the eighth, ninth, and tenth.

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which is the strongest safeguard to the personal security of us all—by sanctioning and suggesting the infliction of death as a rightful punishment for human offences—by demoralizing the public heart, and familiarizing it with the idea of these cold, formal, and deliberate judicial murders—by setting such a high social example of the indulgence of revenge in this world, and of comparative indifference to the too probable fate of the human soul in the next—has been, it is believed, sufficiently shown, to claim from all the recognition of the high moral, of which these evil fruits from evil seed afford so signal an illustration.'

'It is from an abuse of language,' says Eden on the Principles of Penal Law, 'that we apply the word *punishment* to human institutions. Vengeance belongeth not to man.'

But the best proof to show that Capital Punishment is revengeful is the admission of a magistrate to Mr. Livingston. 'He acceded to the propriety of the proposed reform, in all cases but murder; which he excepted on the ground of the difficulty of keeping the offender, and the severity of the substitute of solitary confinement. But when these two objections had been satisfactorily answered, he replied by one of the usual exclamations by which some men—with what is far worse than merely a shocking levity, heartlessness, and irreflection—are wont to dismiss the subject, that the murderer *deserves* death! and blood must be shed for blood! and added, very frankly, "I must confess that there is some little feeling of *revenge* at the bottom of my opinion on the subject." 'If all other reasoners,' adds Mr. Livingston, 'were equally candid, there would be less difficulty in establishing true doctrines.' '*Passion first made revengeful laws, and revenge once*

incorporated with the system of justice, re-produced its own image, after passion had expired.'

More might be added in proof of the revengeful nature of Capital Punishment, but it would be unnecessary. It must be seen that the reformation of the offender is entirely overlooked. And, in all penal inflictions, this should be a great, a paramount object; and when once the true idea of the Inviolability of Human Life is seen and understood, the life of even the most abandoned will be preserved, and society, instead of cutting off the offender, will endeavor to ameliorate his condition, and restore him to community.

What a noble work! And that it may be accomplished, will be seen by the illustrations of kindness which may be found at the close of the present volume. Mr. Rantoul gives an instance of a boy, who was convicted of highway robbery. 'He was convicted and sentenced to death, but, in consideration of his age, and other circumstances, his sentence was commuted to imprisonment for life. In the State prison he became a good boy, and was pardoned, and restored to society, to virtue and to usefulness. He acquired a good reputation in the neighborhood where he lived, and died a Christian death among his friends, in March, 1835.'

'It has been said, but it is the language of unreflecting levity, that the criminal convicted of a capital offence, under our laws, is generally depraved and worthless, and that, therefore, the sacrifice of a few such lives is of very little consequence to society, and it is not an object fit to engage the attention of the government of a great state, even if these laws might be repealed without injury. It is impossible

that any legislator can entertain so inhuman a sentiment. Felons, however fallen, still are men, and have the better title to commiseration the more deeply they are sunk in guilt. If these wretches were princes, says Goldsmith, there would be thousands ready to offer their ministry; but the heart that is buried in a dungeon is as precious as that seated on a throne. Suppose that one only may be caught up from the gulf of vice, misery and perdition, and restored to repentance, virtue and usefulness, this would be gain enough to reward all the exertions that may be made to effect the reform, for there is upon earth no gem so precious as the human soul.*

* See Reports on the Abolition of Capital Punishment, by Mr. RANFORD and others. Reprinted by order of the House of Representatives, from the Documents of 1835 and 1836.

ESSAY III.

SCRUPLES OF JURORS AND WITNESSES.

*Law defeats itself—Facts in England—Lord Brougham's speech—
Petitions of jurors and merchants—Testimony of Blackstone—
Anecdote of a jurymen—Incident of a jury in Plymouth, Mass.*

‘Witnesses are unwilling to testify, and jurors are unwilling to convict, where the sentence is death.’
UPHAM.

WE have met with a great many facts, showing the difficulty of procuring correct verdicts where the penalty was death, not only with reference to jurors, but to witnesses. ‘The severity of this law totally defeats its object. Often is there strong evidence in the neighborhood where a conflagration has occurred, showing that it was designedly kindled, and tending to fix the charge upon the incendiary. Yet no complaint is made, no investigation takes place, because the hanging, if it should end in that, would be a greater evil than the fire. When a trial is had, which but seldom occurs, all possible latitude is given to the circumstances which will take the case out of the present narrow limits of arson. From these and some other causes, the law is practically obsolete; for, of the many thousand instances of arson committed in the last thirty years, within this state, only one has been punished according to law.’ As this essay needs no abstract view, we shall confine ourselves to the simple facts in the case.

‘In England, cases like the following often occur in trials for crimes not capital among us, but which serve

to illustrate the effect of the motives alluded to upon the minds of jurors. A woman was indicted for stealing, in a dwelling-house, two guineas, two half guineas, and forty-four shillings in other money. She confessed the stealing of the money, and the jury found her guilty; but, as the stealing of such a sum would be punishable with death, they found the value of the money to be thirty-nine shillings only, which saved her from the sentence of death. Another female was indicted for stealing lace, for which she refused to take eight guineas, offering it for sale for twelve. The jury who convicted her of the theft, found the lace to be worth thirty-nine shillings. Two persons indicted for stealing the same goods privately in a shop, five shillings stolen in this manner making the offence capital, one of the prisoners was found guilty of thus stealing to the value of five shillings, and the other to the value of four shillings and ten pence.'

Lord SUFFIELD, speaking on this subject in England, offered the following facts:

He held in his hand, he said, a list of *five hundred and fifty-five perjured verdicts*, delivered at the *Old Bailey*, in fifteen years, beginning with the year 1814, for the *single offence of stealing from dwellings*, the value stolen being in these cases sworn *above forty shillings*, but the verdicts returned being '*to the value of thirty-nine shillings*' only. If required, he would produce the name of every one of these five hundred and fifty-five convicts, and show the value proved to have been stolen. It deserved remark, that when the legislature raised the *capital* indictment to *five pounds*, in June, 1827, *the juries at the same time raised their verdicts to four pounds nineteen shillings*; thus still keeping it low enough to save the offender's life. This had happened under the one head of stealing from dwelling houses.*

* See *Selections from the London Morning Herald*, vol. i. p. 280.

One of the last acts by Mr. Brougham, as a commoner, was to present this very subject. The following is his speech, taken from the London Times: 'Mr. Brougham said he had a petition to present, which he felt greatly honored by having been entrusted with, and to which he begged the particular attention of the House. The petition, which was very ably and clearly expressed, prayed for the abolition of the punishment of death for offences unattended by violence; and that a distinction might be drawn in our criminal laws between such offences, and offences which were marked by bloodshed or acts of violence. The petition came from householders of the city of London, who were liable to serve on grand juries. It was signed by many who had served, and by no less than *six persons who had been foremen of grand juries (at the Old Bailey) last year*. It was worthy of the attention of the

And in the same excellent work, vol. i. p. 27, we find the following anecdote:—'Some years ago, a man was tried at Carnarvon for forgery to a large amount on the Bank of England. The evidence was as satisfactory of the guilt of the prisoner as possible, and brought the charge clearly home to him. The jury, however, acquitted him. The next day, the same individual was tried on another indictment for forgery. Although the evidence in this case was as conclusive as in the former one, the jury acquitted the prisoner. The Judge (Chief Baron RICHARDS,) in addressing the prisoner, expressed himself in these remarkable words: "Prisoner at the bar—although you have been acquitted by a jury of your countrymen of the crime of forgery, I am as convinced of your guilt as that two and two make four." A short time after the conclusion of the sessions, I met with one of the jurymen, and expressed to him my surprise at the acquittal of the man who had been tried for forgery. He immediately answered me in the following words: "Neither my fellow-jurymen nor myself had the least doubt of the prisoner's guilt; but we were unwilling to bring in a verdict of guilty, because we were aware the prisoner would have *been punished with death—a penalty which we conceived to be too severe for the offence.*"'

House, on account of the reasons it contained, but more especially on account of the authority of the petitioners; for, *who were so competent to speak of the scruples of jurors, as they who had felt those scruples?*' The petition was signed not only by *jurors*, but by eleven hundred merchants, &c., who had served as jurors, or were eligible. His Royal Highness, the Duke of Sussex, in presenting it, said, 'When we see ninety-one names, on the first skin of the petition, of merchants and others, whose annual returns in trade amount to no less a sum than *ten millions* sterling, I think I have stated to your lordships sufficient to convince you that this petition is entitled to great consideration and respect. These respectable persons state to your lordships their own private feelings, and the situation to which they are frequently reduced in fulfilling their painful duties.' The following extracts will express their views:—

The petitioners view with deep regret the excessive and indiscriminate severity of the Criminal Laws, which annex to offences of *different degrees* of moral guilt the punishment of *death*, and confound the simple invasion of the rights of property with the most malignant and atrocious crimes against the person and the life of man.

Your petitioners, as bankers, are deeply interested in the protection of property from forgery, and in the conviction and punishment of persons guilty of this crime—that your petitioners find, by *experience*, that the infliction of *death*, or even the probability of the infliction of death, *prevents* the prosecution, conviction, and punishment of the criminal, and thus *endangers* the property which it was intended to protect—that your petitioners therefore pray that your Honorable House will not withhold from them that protection which they would derive from a *more lenient* law.*

* 'A banker said that his name had been forged as the acceptor of a bill of exchange; and that, recollecting the severity of the law, rather

In all criminal cases, the maxim of the constitution of England is, that jurors are judges both of the *law* and the *fact*.

The petitioners go on to say,

That, in the present state of the law, juries feel extremely reluctant to convict, where the penal consequences of the offence excite a conscientious horror on their minds, lest the rigorous performance of their duties as jurors should make them accessory to *judicial murder*. Hence, in courts of justice, a most unnecessary and painful struggle is occasioned by the conflict of the feelings of a *just* humanity with the sense of the obligation of an oath.

In this petition we learn another fact respecting the reluctance of witnesses :

That witnesses also are very frequently reluctant to give evidence, lest they might bring upon their consciences the stain of blood ; and thus criminals, who, under a more rational and considerate code of laws, would meet the punishment due to their crimes, escape with impunity ! For these and other reasons, the petitioners pray that the House may take the criminal laws into consideration, for the purpose of the revision and amendment of the same, by drawing a distinction between the simple invasion of the rights of property and crimes of violence and blood, and by abolishing the penalty of DEATH in all cases in which the legislative power cannot justify, in the eyes of God and man, that last and dreadful alternative—the *extermination of the offender !**

In addition to this testimony, hear the language of Sir William Blackstone, about seventy-five years ago :
 ‘ So dreadful a list † (of capital punishments) instead

than divulge the circumstance, he *acknowledged the acceptance to be his, and paid the money.*’

* Selections from the London Morning Herald, vol. i. p. 79.

† At one time, according to Judge STORR, England presented the dark catalogue of one hundred and sixty capital offences. The Selections from the London Morning Herald say two hundred. See vol. i. p. 122.

not congregate the whole community to witness the scene? The true answer is 'that it tends to harden and brutalize the hearts of men,* to give a rude shock to that natural instinct which prompts them to revolt at the idea of the cold and wilful infliction of death by man upon his fellow-man; by that shock to derange the action, and to weaken the deep-seated strength of that instinct; and to send away, from that field of blood, which has been thus darkened and accursed by the shadow of the gallows-tree, many a man, far more ready than he came, to yield to the temptations that may beset him, to commit a murder to which he may be urged by any strong impulse of malignity or cupidity.'

'Every execution,' says Dr. Lushington, in Parliament, 'brings an additional candidate for the hangman,' 'Wo to society,' exclaims Lepeletier, in his report to the national assembly, 'if, in that multitude which gazes eagerly on an execution, is found one of those beings predisposed to crime by the perverseness of their propensities! His instinct, like that of the wild beast, awaits, perhaps, only the sight of blood to awake,—and already his heart is hardened to murder, the moment he is quitting the spot wet with the blood which the sword of the law has shed.'

Volumes might be written, showing the brutalizing influence of this sanguinary law upon the commu-

* A single illustration of this truth will alone speak volumes. The celebrated Volney, in a lecture at the Normal School at Paris, related how powerfully he had been affected, during a journey he had made in France, after the conclusion of the 'reign of terror,' by the spectacle of a crowd of children, who, in different provinces, amused themselves with gillotining cats and chickens, to supply the place of the executions which had become less frequent!

Wm. Lushington

still trussed up apace," and there was not "one year commonly wherein three or four hundred of them were not devoured and eaten up by the gallows, in one place or another," so that the whole number of executions during her reign was not less than nineteen thousand, yet we find it observed and regretted, "that at the time of doing execution of such as had been attained of any murder, felony, or other criminal cause, ordained chiefly for terror and example of evil-doers, people persevered in their felonious sleights and devices." Descriptive of the times when the bloody experiment was so fully tested in England, of the influence of Capital Punishment to deter by example from the commission of offences of a minor, and even petty character, Sir Edward Coke writes: "What a lamentable thing it is to see so many Christian men and women strangled on that cursed tree of the gallows; inasmuch that, if, in a large field, a man might see together all the Christians that in one year throughout England come to that untimely, ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion."

There is one fact which shows that the public are rapidly awaking to the brutalizing influences of executions. We allude to the recommendation to have them more *private*. This is the law in some of the states.* Those who urge this, do, in fact, give up the whole ground that Capital Punishments do good, as an example. If such spectacles are calculated to strike the mind favorably, or to have a moral influence, why not have them in the squares of our crowded cities? Why

* See Laws of Maine, Massachusetts and New York, Appendix I.

true humanity; the gang were assembled, engaged as before in gaming and drunkenness, and in plotting future robberies. This appears, at least, to have been the case; for, two days after, thirteen of their number were apprehended for crimes committed, subsequent to the execution of their companion. And what became of the remainder of the gang? Another funeral, largely attended, took place in Whitechapel, and there the remainder of the band were recognized by a person who knew them well, actively engaged in their iniquitous vocation?

Mr. Livingston, speaking on this subject, says, 'The fear of death, therefore, will rarely deter from the commission of great crimes. It is, on the contrary, a remedy peculiarly inapplicable to those offences. Ambition, which usually inspires the crime of treason, soars above the fear of death; avarice, which whispers the secret murder, creeps below it; and the brutal debasement of the passion that prompts the only other crime thus punished by our law, is proverbially blind to consequences, and regardless of obstacles that impede its gratification. Threats of death will never deter men who are actuated by these passions; many of them affront it in the very commission of the offence, and, therefore, readily incur the lesser risk of suffering it in what they think the impossible event of detection.'

'How happens it that, as Hume bears record, the execution of *seventy-two thousand* "great and petty thieves" in England, during the reign of Henry VIII., was totally inoperative to check the offences for which these human hecatombs were sacrificed, on the altar of this principle of social expediency? And though, in the time of his successor, Elizabeth, "rogues were

still trussed up apace," and there was not "one year commonly wherein three or four hundred of them were not devoured and eaten up by the gallows, in one place or another," so that the whole number of executions during her reign was not less than nineteen thousand, yet we find it observed and regretted, "that at the time of doing execution of such as had been attained of any murder, felony, or other criminal cause, ordained chiefly for terror and example of evil-doers, people persevered in their felonious sleights and devices." Descriptive of the times when the bloody experiment was so fully tested in England, of the influence of Capital Punishment to deter by example from the commission of offences of a minor, and even petty character, Sir Edward Coke writes: "What a lamentable thing it is to see so many Christian men and women strangled on that cursed tree of the gallows; inasmuch that, if, in a large field, a man might see together all the Christians that in one year throughout England come to that untimely, ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion."

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* See Laws of Maine, Massachusetts and New York, Appendix I.

We will give the language of a convict who was near being hanged for coining:

Q. 'Have you often seen an execution?' A. 'Yes.' Q. 'Did not it frighten you?' A. 'No; why should it?' Q. 'Did it not make you think that the same would happen to yourself?' A. 'Not a bit.' Q. 'What did you think, then?' A. 'Think! why, I thought it was a d—d shame.' Q. 'Now, when you have been going to run a great risk of being caught and hanged, did the thought never come within your head, that it would be as well to avoid the risk?' A. 'Never.' Q. 'Not when you remembered having seen men hanged for the same thing?' A. 'Oh, I never remembered anything about it; and if I had, what difference would that make?' We must all take our chance. I never thought it would fall on me, and don't think it ever will.' Q. 'But if it should?' A. 'Why, then, I hope I shall suffer like a man—where's the use of snivelling?'

But let us hear the testimony of one who was an inmate of Newgate. He says: 'The numerous chances of escape, arising in great part from the nature of the punishment, and from the nature of the punishment independently of the chances of escape—the calculations of reason, and the delusions of hope excited by fear—conspire to render Capital Punishment wholly inefficient for the sole end of punishment, which is to present to all a stronger motive for abstaining from, than the ordinary motives for

South America. He insisted that he recognized him beyond the possibility of mistake, by certain peculiar marks of identity; and when we consider the not infrequent cases which have occurred of resurrection after hanging—(a distinguished physician, now in New York, states that he has, in the course of his life, taken part in three such cases)—the story is not incredible. At any rate, there are numerous cases known, in which criminals, who have narrowly escaped death for an attempted crime, have made its repetition the first object of their newly-acquired liberty;

committing, crime. . . . When I entered Newgate, I had not a doubt of the efficacy of public executions, as deterring from crime. By degrees, I came firmly to believe just the contrary. Newgate is the very best place in which to form a sound opinion on the subject; that is my opinion, deduced from all the facts of the case;

Mrs. Fry's opinion corresponds with that of Mr. Wakefield's, just quoted. She says, 'in her early visits to Newgate, she had formed no opinion upon Capital Punishments; but that her intercourse with the prisoners had led to a decided conviction, on her part, of their evil tendency. The language always is, she stated, as soon as an execution is over, "Surely, we cannot pity him now; he is in heaven!" For their persuasion is, that this act of severity obliterates and stones for every former misdeed; and thus the minds of the prisoners are hardened by the reflection that the time is short, and the supposed reward is permanent.

' But what is the effect on the minds of the accomplices, without? This too may be calculated. A boy was lately ordered for execution, for snatching a watch from a person, at a funeral in Whitechapel. Two friends of mine, conceiving that he was innocent of the alleged crime, had the courage to go to the house frequented by the gang to which he belonged; there my friends found, two days previous to the execution of their comrade, the gang assembled, engaged in drinking, gaming, and licentious conversation. The lad was executed on the Tuesday; on the Wednesday, my friends revisited this haunt of villainy, for the purpose of endeavoring to persuade some of these wretched beings to relinquish their evil course of life; again the gang were assembled. After the lapse of a week, these gentlemen returned on their mission of

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Who can read this description, and contend for the moral influence of public executions? A witness was once asked whether he thought Capital Punishment deterred criminals. He answered :

I do not. During one sitting, as a magistrate, three persons were brought before me for uttering forged notes. During the investigation, I discovered that those notes were obtained from a room in which the body of a person, named Wheller, (executed on the preceding day, for the same offence), *then lay*, and that the notes in question were delivered for circulation, by a woman with whom he had been living. This is, (he adds,) a strong case, but I have no doubt that it is but one of many others.*

* Another strikingly similar instance is related by Mr. Livingston, on the authority of a gentleman at a public meeting, in Southampton, England, as having been detailed by Mr. Buxton. 'An Irishman, found guilty of issuing forged bank-notes, was executed, and his body delivered to his family. While the widow was lamenting over the corpse, a young man came to her to purchase some forged notes. As soon as she knew his business, forgetting, at once, both her grief and the cause of it, she raised up the dead body of her husband, and pulled from under it a parcel of the very paper, for the circulation of which he had forfeited his life. At that moment an alarm was given of the approach of the police; and, not knowing where else to conceal the notes, she thrust them into the mouth of the corpse, and there the officers found them,' Mr. Rantoul relates, 'that an execution, which took place at Worcester, for the crime of rape, on the 8th of December, 1825, was shortly afterward followed by an attempt, by a brother of the criminal, to commit the same offence for which his own brother had just lost his life. The cases have been numerous, in which the fact that near relatives have perished on the gallows, has not prevented the perpetration of crimes, leading necessarily to the same fate. The notorious Fanny Cannon, for instance, who committed numerous murders in Delaware, and, who destroyed herself by poison after her arrest, had had a father who was hung for murder, and a brother for horse-stealing. At the execution of the notorious pirate Gibbs, a few years ago, in New York, a witness was present, who declared, positively, that he had seen ~~him~~ hung on a former occasion, for the same crime, at some port in

EFFECT OF PUBLIC EXECUTIONS UPON THE SPECTATORS.

ESSAY V.

Anecdote of a pick-pocket—Testimony of Dr. Dodd—Effect upon a celebrated banker—Description by an English traveller—Testimony of a witness—Testimony of a convict—Private executions—Execution of Lechler—Conduct of an executioner.

'What must men think, when they see wise magistrates and grave ministers of justice, with tranquillity, dragging a criminal to death, and whilst the wretch trembles with agony, expecting the fatal stroke, the judge, who has condemned him, with the coldest insensibility, and perhaps, with no small gratification from his authority, quits his tribunal to enjoy the comforts and pleasures of life?' BECCARIA.

It has been remarked, frequently, that the days of public executions, instead of being seasons of solemn reflection and sincere penitence, are seized on as days of obscene jesting, and coarse ribaldry. The loose and the abandoned, who attend, improve the opportunity to commit new depredations upon society. A pick-pocket, being asked by the chaplain of Newgate how he could venture on such a deed, at such a time, very frankly replied, 'that executions were the best harvests that he and his associates had; for, when the eyes of the spectators are fixed above, their pockets are unprotected below.'

In an account of the execution of two persons in England, *for thy arrests* were made for the same crime, 'We constantly,' says the unhappy Dr. Dodd, in his sermon on this subject, himself destined at a subsequent period (1777) to suffer the same fate, 'hear of

EFFECT OF PUBLIC EXECUTION

• crimes not less flagitious than those for

criminal is to die, perpetrated even at the very place and moment of his punishment? One of the jury that tried and convicted poor Dr. Dodd, was executed on the same gallows, (Tyburn,) for the same offence, (forgery,) within *two years* afterward. And so, too, it is said of Mr. Fannihero, the celebrated banker, who was executed for the same crime, that the idea of committing it first entered his mind while returning home from an execution which he had witnessed, while passing, one morning, along the street in front of Newgate. 'One grown man,' says Mr. E. G. Wakefield, 'of great mental powers and superior education, who was acquitted of a charge of forgery, assured me that the first idea of committing a forgery occurred to him at the moment when he was accidentally witnessing the execution of Fannihero.' The Rev. Mr. Roberts, of Bristol, England, presents the astounding fact, that he conversed with one hundred and sixty-seven convicts *under sentence of death*; one hundred and sixty-four of whom had witnessed executions.*

Read the following description, given by a writer in his travels in England. After describing the usual preparations, he says:

There were present: about two thousand persons, of both sexes, and of every age, rank, and character. There was the archbishop, who, evidently, had played the truant, to see the man hanged. There was the aged man, white with a succession of forgotten winters, and furnishing, in his collapsed and wasted exterior, only an index to the vital ebb within—he had come to treat his gorge with what had never blessed the vision of his youth or prime. He had regarded his son to attend and protect him: but his son had been a

* See a valuable work entitled: 'Necessity of Popular Education,' Appendix, p. 153. By James Smeaton—Boston, 1832.

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UPON THE PRISONER.

effect is brought on by the operation of great excitement on weak minds.

We have in this number taken only one view of our subject: The influence of Capital Punishment upon the prisoner himself. We have seen that no good influences have been produced upon his mind by his ignominious death.

In fact, public executions generally produce a sort of stupid brutality. Leadings, who was executed in Albany, is a remarkable illustration of the practical influence of the punishment of death. 'He went to the scaffold perfectly indifferent and reckless, and sunk in such a condition of stupid brutality, as to create on the part of many a disbelief of his soundness of mind. At laboring in vain to arouse him to some better state of preparation for the awful journey to which he was so soon to be despatched, the governor respited him twice, from week to week; but to no effect. On its being proposed to make an effort to procure a commutation of his sentence, Leadings expressed his hope that it would not be done, declaring his preference for execution over imprisonment in the State Prison. He was, in fact, desirous of having it over.*

* Shakespeare has anticipated this picture. His moral will readily suggest itself to the reader, when he reflects on the number of this class of men from whom these crimes of brutal violence proceed, and on their total insensibility to the terrors of death, which to them bear no comparison with those of a long imprisonment: "Master Barnatine, what, ho! your friend the hangman! you must be so good, sir, to rise, and be put to death: pray, Master Barnatine, awake, till you are executed, and sleep afterward."—*Measure for Measure*. Act 4, Scene 3.

'The wretch thus addressed is described as a "man that apprehends death no more dreadfully, but as a drunken dream;—careless, reckless, and fearless of what's past, present or to come,"

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to his fellow-sufferer, when groaning with agony, ' were liable to one disorder more than another? One malefactor, while under exhortation, and in the act of being pined, said, ' Look to your own sins, gentle men; you have all enough to answer for, ' addressing himself to those around him; ' mine are not heavier than your own; and if they should be found so, neither of you will answer for them. ' In this temper and feeling he coolly walked to the scaffold, and there suffered the last penalty of the law.

But let us hear the testimony of one familiar with prisoners. He says, ' the valuable time of the malefactor is wholly wasted in encouraging vain hopes of pardon, in receiving visits, and in efforts to keep up a determined carriage to the last day, even on which he flatters himself that it may arrive, and therefore he must not confess. This is the state of mind of nine culprits out of ten until the eve of the fatal morning, when, fatigued, weak, and worn out with his efforts, the mind becomes suddenly depressed with disappointment, corresponding to the condition of the body; he then falls into a state of stupor and insensibility, from which it is almost a cruelty to attempt to rouse him, as it is too late now to make any beneficial religious impression on him. The next morning, when brought out of his cell to be pined, you behold a man already half dead;—his countenance has fallen, his eyes are fixed, his lips are deadly pale and quivering, while his whole aspect, in anticipation of the reality, gives you the personification of death's counterpart. . . . Sometimes the affair takes quite another turn, and the malefactor is seized with a phrenzy for death, as being the only road to happiness, when he will smile and talk as if he were the happiest man in existence. This

EXECUTION OF TWO BROTHERS—FATAL ACCIDENT.

From proceedings of a general meeting of the Howard Society, Dublin, 1832.]

James died without a struggle—but, melancholy to relate, the rope by which Alexander was suspended broke, and he was precipitated to the pavement, a distance of nearly forty feet. He fell with the side of his head on his own coffin, which was broken, and rebounded off it a few feet. He was instantly carried in (supposed to be dead) by two officers of the jail. The executioner, also dressed in white, with the part that covered his face dabbed over with black, by the assistance of a ladder, soon put another and a stronger rope over the block, and with some difficulty again raised the drop—in doing which, the unfortunate culprit, then suspended, was pushed as much as possible, to the one side, and lowered a little farther. In about twenty minutes from the time he fell, to the astonishment of the assembled multitude, Alexander again appeared, and walked out on the drop more firmly than before, answering to the prayers of the clergy. He took his place, and the signal being given, the drop was again slipped, but rested on the shoulder of James, who was again pushed aside, and Alexander was launched into eternity, but not suddenly. The board slowly moved down, sliding along James's body. The knot of the rope had shifted round under the chin of Alexander, and he suffered dreadfully for several minutes. His whole body was convulsed; during the strangulation he several times put his feet to the wall, and pushed himself from it with great force: his clothes burst open, so that his naked breast was seen; and the cap not being altogether over his face, blood was seen flowing from the wound which he had received on the cheek in the fall. The feelings of the beholders cannot be described—they were most agonizing. At length, his hands fell—his body was seen to stretch—and he hung motionless alongside his brother. After hanging the usual time, they were cut down, and their bodies handed over for dissection.

EXECUTION AND DECAPITATION OF THIRTY-TWO AND FOUR OTHERS,
FOR HIGH TREASON.

[From the same.]

At four o'clock in the morning, a number of persons began to assemble near Newgate. Even a guinea was given for a near

view ! When Ings stepped upon the scaffold he tried to excite three cheers ; he set the example himself, and tried to accompany his voice with a motion of his arms as well as he could in their pinioned state, but this melancholy example of the ill-regulated state of his mind in the awful condition in which he was placed, had no effect upon the immense multitude present, who surveyed the dreadful spectacle before them with becoming silence. Ings immediately followed his attempt to cheer by singing aloud the two first lines of the popular song of '*Give me death or liberty*.'

EXECUTION OF ARMSTRONG, HEARSON, AND BECK.

[From the same.]

* * * Hearson, who had joined with great fervor in all the devotional exercises of the morning, surprised all who had seen his previous conduct by the manner in which he behaved after mounting the scaffold. He took his cap off his head, waved it in a sort of triumph, and began to dance like a maniac in his chains. He recognized some individual who was seated on a house-top opposite the scaffold, and immediately shouted out, ' Well done, Will, lad.' A person in the crowd said to him, ' Good by, Curley,' addressing him by the name by which he was known in pugilistic circles, of which both he and Armstrong were great frequenters. This address set him to dancing again. His extraordinary conduct at this crisis of his fate did not appear to arise from any spirit of bravado, but from sudden delirium. He then turned round to the hangman, and complained that he had not an inch of rope. ' Give me rope enough, that I may the sooner be out of misery.' He then burst into a series of ejaculations for mercy to his soul. Armstrong, who was brought last upon the scaffold, was much distressed on seeing the frantic gestures of Hearson. He said to him, ' None of that, George ; it is not sense ; I must say that I am innocent, because I am so ; but I'll have none of this.' He was then tied up to the beam. About eight minutes were consumed in these necessary preparations. Exactly at twenty minutes before twelve, the hangman drew their caps over their faces, and that ceremony seemed to be the signal for a thousand voices to utter the fearful cry of ' Murder ! and of ' Blood !'

as he has been condemned. This is not always the case; we are sometimes told that the prisoner died penitent! Monstrous law! At the very moment, then, when reformation has commenced, the individual is cruelly put to death! What should we think of the physician who should recommend that, when his patient began to recover, he should be murdered?

We intend to confine our present labor to a consideration of the paralyzing influence of executions upon the prisoner. We cannot do this better than to give a few practical illustrations:

EXECUTION OF BOWINGTON.

[From the Mobile Commercial Advertiser.]

He walked to the scaffold with a firm and unwavering step. His whole soul had been steeled and nerve'd up till the minutes of the law commenced robing him for death, and fixing the fatal noose. At that moment, he covered, and sunk into the most subject desperation. A more sudden and fearful transition, perhaps, was never witnessed. Is there no hope? Must I die? were answered in the solemn negative. The blood forsook his cheeks, despair was written in awful marks upon his baby features, and a scene of horror ensued that beggars description. He dashed from the foot of the scaffold among the military. But he was easily secured. Then followed a scene of horror, which we pray may find no parallel hereafter in the execution of the laws. The hopeless agony of the criminal was displayed in obstinate resistance to the performance of the necessary duties of the agents of the law; and, even when at last suspended from the fatal cord, his desperate clinging to the life he had forfeited, was shown by struggles to free his arms from the pinions, and clutching at the rope. He succeeded in thrusting his hands between the rope and his throat, and thus, resisting and struggling to the last, died despairing, and, for aught that human eye could see, impatient. The last five minutes of his life were marked by a horror of dying, a prostration of energies, as remarkable as the sternness of nerve and reckless levity of carriage which had signalized him during the

understand it as far as my humble abilities will let me; I believe what it says; I've confessed my crime; I've confessed that I've done wrong; and I've prayed to God to forgive me for it; and I know nobody else can forgive me if he does not; I've forgiven everybody that ever did me wrong, as I hope to be forgiven; I owe nobody any ill-will in the world; I have no hard feelings against a human being; I know I must die on Friday next; I know that the sentence is just; I've suffered too much poverty and misery in this life to care very much about leaving it; I know I'm not properly prepared to die, and I pray to God to prepare me before I die; I believe in the Bible, and I believe in God; and I believe that he's more merciful than men are. And if, after all this, I am to be sent to hell, why, I think it's very hard, and I should like to know what I am to do, or what you want me to do. At any rate, I don't want any of your prayers, and I don't want you to come near me again. And if heaven be such a place as this Bible tells me it is, why, I'm very sure that you won't go there, and that there'll be very few like you to be found in any part of it."'

In the case of the execution of Stephen M. Clarke, only seventeen years of age, for setting fire to a building in Newburyport, it was found necessary to force him from his cell, and drag him to the scaffold, amidst a parade of soldiers and martial music! How dreadful! To drag a fellow-being, a mere youth, flush with life, and put him to death in the most cruel manner. Who does not execrate in his heart those laws which require such a horrid spectacle?

The law knows no bounds to its cruelty, for we have an account of the execution of a pirate, in Boston, even after his attempt to commit suicide. It appears that he had been narrowly watched, but the sheriff leaving him for a moment, he seized the opportunity, and attempted to take his own life. But so barbarous and stern is the law, that life must be taken by its own ministers. While the wound was flowing fresh, and while life was almost extinct, he was taken in a chair, placed under the gallows, and cruelly murdered!

diminishing, increases the number of offenders. The injured, through compassion, will often forbear to prosecute; juries, through compassion, will sometimes forget their oaths, and either acquit the guilty, or mitigate the nature of the offence; and judges, through compassion, will respite one half the convicts, and recommend them to the royal mercy. Among so many chances of escaping, the needy and hardened offender overlooks the multitude that suffer. He boldly engages in some desperate attempt to relieve his wants, or to supply his vices; and if, unexpectedly, the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling, at last, a sacrifice to those laws which long impunity had taught him to contemn.

Such is the testimony borne by this great and learned judge, to the evil of sanguinary laws, and the temptations which they throw in the way to commit what he elsewhere calls 'pious perjuries.' And if men are tempted to commit 'pious perjuries' by the law, the crime is with those who make it, and not on those who pray for such an alteration as may remove that temptation forever.*

* Observe that jurymen in a blue coat, said one of the judges at the Old Bailey to Judge Nares. 'Do you see him?' 'Well, there will be no conviction of death to-day.' And the observation was confirmed by the fact.—Works of JEREMY BENTHAM, vol. i. p. 450. Edinburgh, 1843.

A circumstance which shows the reluctance of jurors to bring in verdicts affecting life, happened in the case of Isaac Leavitt, who was tried for murder in Plymouth, Mass. The jury called up the judge about midnight, to know if they could enter a verdict of manslaughter. The reply was in the negative. They then agreed to bring in a verdict of murder, but unanimously to petition the executive for a commutation of the sentence to imprisonment, which, by the exertions of a philanthropist, whose name is dear to the writer, was afterwards effected.

nity, and especially on those who witness the scene.* The following instance is given by Mr. Livingston. 'John Lechler was executed at Lancaster, Pennsylvania, and while one old offence was atoned for, more than a dozen new ones were committed, and some of a capital grade. TWENTY-EIGHT PERSONS were committed to jail on Friday night, for divers offences at Lancaster, such as MURDER, larceny, assault and battery, &c.; besides many gentlemen lost their pocket-books, though the pick-pockets escaped, or the jail would have overflowed. In the evening, as one Thomas Burns, who was employed as a weaver in the factory near Lancaster, was going home, he was met by one Wilson, with whom he had had some previous misunderstanding, when Wilson drew a knife, and gave him divers stabs, in sundry places, which are considered mortal. Wilson was apprehended and committed to jail, and had the same irons put on him which had scarcely been laid off long enough by Lechler to get cold.† It appeared, on inquiry, that Wilson was one of the crowd.

'Very lately, in the state of Ohio,' says Mr. Rantoul's report in 1836, already quoted, 'on the day on

* 'Those whom it would be desirable to affect solemnly, and from whom we have the most reason to fear crime, made the day of public execution a day of drunkenness and profanity. These, with their attendant vices, quarrelling and fighting, were carried to such an extent in Augusta, (at Sager's execution,) that it became necessary for the police to interfere, and the jail, which had just been emptied of a murderer, threw open its doors to receive those who came to profit by the solemn scene of a public execution.'—*Report of Committee to the Legislature of Maine*, 1835.

† 'After the execution of Lechler, in Pennsylvania, had gratified the people about York and Lancaster, with the spectacle of his death, and produced its proper complement of homicide and other crimes, a poor wretch was condemned to die in another part of the state, where the

which a man was executed for the murder of his wife, under circumstances of particular cruelty, another man, near the place of execution, murdered his wife in the same manner; and this is by no means the only instance where the crime seems to have been directly suggested by the punishment intended to prevent it.*

There is another view that should be taken of this subject, which is, that public executions lead to the

people had not been indulged with such a spectacle. They collected by thousands,—tens of thousands. The victim was brought out—all the eyes in the living mass that surrounded the gibbet were fixed on his countenance, and they waited, with strong desire, the expected signal for launching him into eternity. There was a delay. They grew impatient. It was prolonged, and they were outrageous. Cries, like those which precede the tardy rising of the curtain, in a theatre, were heard. Impatient for the delight they expected in seeing a fellow-creature die, they raised a ferocious cry. But when it was at last announced that a reprieve had left them no hope of witnessing his agonies, their fury knew no bounds; and the poor maniac (for it was discovered that he was insane) was with difficulty snatched by the officers of justice from the fate which the most violent among them seemed determined to inflict.

‘The above is taken from Livingston’s celebrated work on “The Expediency of Abolishing the Punishment of Death.” This eminent legislator adds, “This disgraceful scene took place at Orwigsburgh; the wretched madman who was so near suffering, was named Zimmerman. I have the details,” he continues, “from a gentleman of the first respectability, in Pennsylvania,” and his informant added, “Executions in this state are scenes of riot and every species of wickedness; twenty, thirty, even forty thousand persons have been in attendance on such occasions. In the country, two or three days are employed in the merry-making, much after the manner of fairs in former days.”’

* ‘A man, by the name of Strang, had been convicted of a foul murder, committed on Cherry Hill, in Albany, by shooting in cold blood, and for the vilest purposes, Mr. Whipple, an enterprising and worthy citizen. Levi Kelly, a farmer of the town of Otsego, living between sixty and seventy miles from Albany, heard of the day when Strang

commission of suicide. The frequent recurrence of suicides after such seasons, is a fact well established, and in a form, too, scarcely known to the ancients, i. e., strangulation by suspension.* Mr. Livingston has some good remarks on this subject:—‘The most serious and intense reflection has brought my mind to the conclusion, not only that it fails in any repressive effect, but that it promotes the crime. The cause it is not very easy to discover, and still more difficult to

was to be executed, and soon after expressed to his neighbors a determination to be present at the exhibition. I have been informed that he had then never seen a man put to death. Kelly was a man of respectable connexions, and, I believe, of correct morals;—at any rate, he was not distinguished for immorality of any kind. He was, however, known to possess very vindictive passions. He went from Otsego to Albany for the *sole* purpose of seeing Strang executed. On his return he seemed entirely engrossed by the exhibition he had witnessed. He talked of nothing else on the road and at the public houses where they stopped for refreshment.

‘A man lived in Kelly’s house, by the name of Spafford, with whom he had had some little difficulty. In less than a fortnight after Strang was hung, an altercation occurred between Kelly and Spafford, when Kelly seized a loaded gun, and shot Spafford through the heart. For this offence he was tried, convicted, and executed. There was not a particle of evidence that Kelly was insane at the time he perpetrated the horrid act. Here was a case where the spectator hastened to commit the same offence, and *with the same weapon*, for which he had just seen the terrible punishment of death inflicted.

‘On the evening of the day on which Kelly was hung, a man by the name of Cooke, in the neighborhood of Cooperstown, who was present at the execution, committed suicide *by hanging*. Now, may not the philosophical inquirer be permitted to indulge the conjecture that the public execution of Strang, instead of tending to preserve life, led to the destruction of three other lives?’

* O’Sullivan gives the following affecting instance: ‘Two or three days after the execution of Leadings, a fine boy, of about sixteen years of age, the delight of highly respectable and estimable parents, hung himself from the banisters of the stairs in his father’s house, in Albany.’

explain; but I argue from effects—and when I see them general in their occurrence after the same event, I must believe that event to be the efficient cause which produces them, although I may not be able to trace exactly their connexion. This difficulty is particularly felt in deducing moral effects from physical causes, or arguing from the operation of moral causes on human actions. The reciprocal operations of the mind and body must always be a mystery to us, although we are daily witnesses to their effects. In nothing is this more apparent, or the cause more deeply hidden, than in that propensity which is produced on the mind to imitate that which has been strongly impressed on the senses, and that, frequently, in cases where the first impression must be that of painful apprehension. It is one of the earliest developments of the understanding in childhood. Aided by other impulses, it conquers the sense of pain and the natural dread of death. The tortures inflicted on themselves by the Fakirs of India; the privations and strict penance of some monastic orders of Christians; and the self-immolation of the Hindoo widows, may be attributed, in part, to religion, in part to the love of distinction and fear of shame: but no one, nor all of these united, except in the rare cases of a hero or a saint, could produce such extraordinary effects, without that spirit of imitation to which I have alluded. The lawgiver, therefore, should mark this, as well as every other propensity of human nature; and beware how he repeats in his punishments the very acts he wishes to repress, and makes them examples to follow, rather than to avoid.'

We earnestly and solemnly beseech the advocates of the death-penalty to stop and ponder, to weigh the matter in view of all these facts, and ask themselves

whether they can sustain this inhuman law? The history of the world goes to show that scenes of blood only harden the heart, and brutalize the affections.*

* See the following account of the conduct of an executioner who cruelly put seven men to death for merely entertaining 'constitutional principles,' in Portugal, under the reign of the usurper, Don Miguel:— 'At eight o'clock the mournful procession was formed at the prison of the Lemoira, about a mile from the place of execution; the seven unhappy men, with fourteen priests, one on each side of each prisoner, in the centre; the prisoners bare-footed and bare-headed, dressed in long white habits, with a hood hanging down behind, each bearing a small wooden crucifix in his clasped hands, secured together by bolts at the wrists. They were strongly guarded, both before and behind. At each church they had to pass, the procession stopped to hear an exhortation, so that it was near *twelve* o'clock before they reached the fatal place. *One at a time* ascended the platform, up a broad flight of steps, accompanied by two priests, as in the procession, and was immediately placed on the seat, with his back to the upright post. The hangman, a miserable wretch, walking with a crutch, then secured the legs, the arms, and body of the unhappy man with cords, and placing a short cord round his neck and round the post, he put the hood over the face, and then, going behind the post, introduced a short thick stick, and, giving it four or five turns, produced strangulation. The body was then untied, and laid at a convenient distance, and *another* brought up from the foot of the scaffold, until the whole had suffered. The youngest, or least criminal, was executed first; and, as each occupied fifteen to twenty minutes, the last had to endure, for at least two hours, the horrid sight of the sufferings of his fellow-prisoners. The mind can scarcely imagine a more dreadful state of mental suffering. When the whole were strangled, the hangman wiped his face, and, seating himself in the fatal seat, coolly smoked a cigar, regaled himself with a bottle of wine, and then, placing a block of wood under the neck, proceeded to cut off the heads, from which the blood flowed copiously in streams from the platform; then, collecting the cords, and coolly wiping the hatchet and knife in one of the white dresses, he left the platform, first throwing the heads and bodies in a heap, over the iron grate below. The fire was kindled, and in a few minutes the whole was in a blaze. By six o'clock the whole was burnt to ashes, when a gang of galley-slaves, with irons on their legs, took the ashes in hand-barrows, and threw them into the Tagus.'

The heart becomes hardened by scenes of rapine and murder, and those who become witnesses of sanguinary punishments only want for provocations of poverty or anger to perpetrate the same crime for which the capital offender is punished. Hence, the corrupting influence of war, as well as of the law which sanctions the Punishment of Death. We are not aware how much the battle field has done to corrupt public sentiment. We have not, however, taken up that subject in this work, because, although it is allied to it, yet we preferred to present it in a separate dissertation.*

* A wretch, who was executed at Exeter, England, on being removed from the bar, after sentence of death had been passed, exclaimed to the by-standers, 'I have killed many men to please the king, and why should I not kill one to please myself?' One of the soldiers who was taken up for wantonly shooting a man at Lestwithiel, in 1814, on witnessing the horror and agitation of the peaceful townsmen, very coolly observed, 'Here is a pretty fuss about killing one man; why, I have seen hundreds killed.'

ESSAY VI.

EFFECT OF PUBLIC EXECUTIONS UPON DOMESTIC LIFE.

Provision in Prussia for the children of criminals—Condemned forger and his family—The condemned and his child—Incident at Massachusetts State Prison—Painful fact—Hangman and the judge.

‘But the wretches, who die, are not the only sufferers. . . . Who knows how many innocent children we may be dooming to ignominy and wretchedness? Who knows how many widows’ hearts we may break with grief; how many grey hairs we may bring with sorrow to the grave?’—*Report of Howard Society in Dublin, 1832.*

WE now approach a portion of our subject which has excited very little feeling in the community, and yet is one of the most tender views that can be presented. We have shown the demoralizing influence of public executions, and the indifference of the prisoner to his fate. We have seen the brutalizing, deadening influence of these scenes upon the spectators. There is another class whom we cannot suppose to be present; a class who have retired from the public gaze, —who have closed their ears to the martial music, the jesting, the coarse ribaldry usually accompanying such scenes; a class pining in secret anguish over the miserable and the fallen culprit. We mean the wife, lamenting, with inexpressible grief, the cruel fate of her husband; the mother weeping in solitude over her beloved son; the distracted sister over a fallen brother! It has not been the business of history to keep a record of tears shed in private, and of hearts bleeding and

broken in retirement. But they are not forgotten by the true philanthropist and the Christian.* They are not forgotten by Him who 'looks down from the height of His sanctuary, . . . to hear the groaning of the prisoner, to loose those that are appointed to death.' Oh! the anguish of their hearts! Could we get admittance there, what griefs should we see! It is, indeed, on such occasions, the living who die! 'There is no killing like that which kills the heart!' This is admirably presented in the following thrilling sketch from Frazer's London Magazine.

THE CONDEMNED FORGER AND HIS FAMILY.

The forger had been convicted, and condemned to suffer the dreadful penalty of death. His wife was a sensitive and accomplished lady, although the wife of a felon. An hour had been appointed for the last earthly interview. Pale and trembling, the wife, with three children, entered, to them, the tomb of a living being, who had been their only love and hope in this world,—he whose solicitude to insure their happiness, was the cause of their misery. After an absence, it is natural to rush into the arms of those we love; but disgrace and consequent shame make strange havoc with the impulses of the heart.

* A beautiful instance is given by Prof. Stowe, in his Report on Education in Prussia, &c., of the provision made for the children of criminals:—'When I was in Berlin I went into the public prison, and visited every part of the establishment. At last I was introduced to a very large hall, which was full of children, with their books and teachers, and having all the appearance of a common Prussian school-room. 'What,' said I, 'is it possible that all these children are imprisoned here for crime?' 'Oh no,' said my conductor, smiling at my simplicity; 'but if a parent is imprisoned for crime, and, on that account, his children are left destitute of the means of education, and liable to grow up in ignorance and crime, the government has them taken here, and maintained and educated for useful employment.' The thought brought *tears to my eyes.*

'Do you forgive me, Maria?' said the husband, keeping aloof from his wife, as if his touch would be pollution.

'Would that others would as readily forgive!' replied the agonized wife, sinking on a seat near to her.

'Ah, you mean God! Ah, have you prayed for me, Maria! Do you think there is hope for me? Speak! I have been a great sinner—a wicked sinner, Maria. Yet do not tell these, your children, what a bad man their father was. But wherefore are they here? Is not my punishment sufficiently heavy without bringing my children to reproach me?'

The jailor reminded the bewildered man that he had expressed a wish to see them.

'Yes—true,' he ejaculated; 'but I have been mad, and have not recovered my senses. Maria, your husband is mad!'

Maria heard him not; she was lying senseless on the floor. The children, aged six, and eight, and ten, were crying over her, thinking that their unhappy and evidently distracted father had been the cause of her death.*

Both husband and wife had thousands of questions to ask, and more matter to communicate, but the interview was ended. Several hours elapsed ere the wife was restored to perfect consciousness; and it was late in the evening before her doomed husband could be brought to resume the preparations for his fate that awaited him the following morning.

'Shall I not see him once more?' inquired the wife, as she slowly recovered her recollection—'only once more—only one look! I am now prepared, and can command my feelings.'

This privilege was denied her, as such interviews rarely answer any purpose but to distract the mind of the one whose business it is to forget the world and all its attractions, and to agonize the feelings of the other, who stand in need of all the resolution they possess to sustain the calamities attendant on a catastrophe so fatal to their worldly prospects.

It was evening before the wife and her children could be conveyed home; the latter, while at the prison and on their road, asking their agonized mother a number of questions regarding their father, every one of which penetrated the soul and caused her fur-

* See Engraving.

ther anguish. It was the first time the subject of death had been forced on their attention, and they were too young to have anything but a confused notion of it,—now they had learned that their father was doomed, in a few hours, to meet it before the public gaze. In all these cases, the truth is that the wife and children of the offenders are the only parties really punished. Even the hanging itself falls with a heavier weight of suffering on the sensibilities of an attached wife, than it does on the actual culprit, whose sense of pain has a termination. The wife, tortured with the picture of the scene of strangulation on her imagination, in vain, when worn out with distress of mind, seeks repose; the excited and deranged nerves keep the fancy at work; she dreams that they have laid her dead husband, cold and clammy, by her side, and awakes in terror at being so near one whose absence a short time since was her only trouble. The hours, as the morning approaches, are counted; then minutes are watched. The fatal period arrives—the clock strikes eight—she sees the signal—hears the drop fall—feels the jerk—the sensation of choking—and swoons, again to revive to the consciousness that all is desolation and misery around her.

A celebrated writer has finely presented the interview of a prisoner and his child, which admirably illustrates the point :*

LAST INTERVIEW BETWEEN THE CONDEMNED AND HIS CHILD.

MY child looked rosy and happy, and her large eyes were bright. Oh! she is so pretty! I drew her towards me, I raised her in my arms, and, placing her on my knees, kissed her dear hair. I asked, 'Why is her mother not with her?' And I learnt that she was very ill, and my poor old mother also. Mary looked at me with astonishment. Caressed, embraced, devoured with kisses, she submitted quietly; but, from time to time, cast an uneasy look towards her nurse, who was crying in the corner. At length I was able to speak.

'Mary!' I exclaimed, 'my own little Mary!' and I pressed her violently against my breast, which was heaving sobs.

* See 'Last Days of the Condemned,' from the French of Victor Hugo. By Sir HESKETH FLEETWOOD, M. P.

She uttered a little cry, and then said, 'O! you hurt me, sir.'
'Sir!'

It is nearly a year since she has seen me, poor child! She has forgotten me, face, words, voice; and then, who could know me with this beard, this dress, and this pallor? What! already effaced from that memory, the only one where I wished to survive! What! already no longer a father,—am I condemned to hear no more that word, so soft in the language of children, that it cannot remain in the language of men—'Papa?' And yet to have heard it from that sweet mouth once more, only once more, that is all I would have asked in payment for the forty years of life they will take from me.

'Listen, Mary,' said I to her, joining her two little hands in mine. 'Do you know me?'

She looked at me with her bright, beautiful eyes, and answered, 'Oh! no, indeed.'

'Look at me well,' I repeated. 'What! dost thou not know who I am?'

'Yes, sir,' she answered; 'you are a gentleman.'

Alas! while loving one being on earth, loving with all your deep affection, having that being before you, who sees and looks at you, speaks and answers you, and yet knows you not! You wish for consolation, but from this one being, who is the only one that does not know that you require it, because you are going to die!

'Mary,' I continued, 'hast thou a papa?'

'Yes, sir,' said the child.

'Well, then, dearest, where is he?'

She raised her large eyes in astonishment.

'Ah! then you don't know, sir? Papa is dead.'

Here she began to cry. I nearly let the little angel fall.

'Dead!' I exclaimed. 'Mary, knowest thou what it is to be dead?'

'Yes,' she answered. 'He is in earth and in heaven;' and she continued of her own accord, 'I pray to God for him, morning and evening, at mamma's knees.'

I kissed her on the forehead.

'Mary, say to me thy prayer.'

'I could not, sir; a prayer I do not say in the middle of the day. Come to-night to my house, and you shall hear me say it.'

This was enough. I interrupted her.

'Darling Mary, it is I who am thy papa.'

'You!' returned she.

I added, 'Wouldst thou like me for thy papa?'

The child turned away.

'No, sir, my papa was much prettier.'

I covered her with kisses and tears. She tried to escape from my arms, crying, 'Sir, you hurt me with your beard.' Then I replaced her on my knees, devouring her with my eyes, and continued—

'Mary, canst thou read?'

'Yes,' she answered, 'I can read very well. Mamma makes me read my letters.'

'Well, then, read a little to me,' said I, pointing to a printed paper which she held crumpled in her dimpled hands.

She shook her pretty head, saying, 'Oh! dear me, I can only read fables.'

'But try, my darling; come, open your paper.'

She unfolded the paper and began to spell with her finger, 'S e n — s e n, — t e n c e — t e n c e, — *Sentence.*' I snatched it from her hands. It was my own sentence of death she was reading to me! Her nurse had bought the paper for a penny. To me it had cost more. No words can convey what I felt. My violence had alarmed the child, who was ready to cry. Suddenly she said to me, 'Do give me back my paper; I want to play with it!' I restored her to her nurse. 'Take her hence!' and I fell back in my chair, gloomy, desolate, in despair. Now they may come; I care for nothing more. The last fibre of my heart is broken.

Some writer says, that when we see an execution, we should say, *there goes my father, my brother, or my son.* This is the true Christian spirit. How many executions would take place in our world if such a spirit pervaded society?

And when the scaffold has done its work, and the unfeeling ministers of justice have left the scene, to mingle once more in the busy crowd, as though a mere ordinary occurrence had happened, what must be the

feeling, the intense agony of grief of that wife or mother, when the cold, stiffened body is carried to the dissecting room, or brought to the family for burial? Who can describe the anguish of that hour? How many such scenes have transpired in our fair world!

And who can tell whose lot it may be? How uncertain is human testimony! How often there may be perjury! How insinuating is temptation! How frail our resolutions! How liable is he that thinketh he standeth to fall! 'Does the reader,' says a writer, 'startle at the very suggestion, as among the most improbable of all things? I can tell him the painful fact, that it happened to myself, several years ago, to call, at a distant place, on a gentleman high in probity, and in personal and relative respectability, and to meet at his house, by accident, another gentleman equally so, who would have both started with horror, and kindled into indignation, had any one then predicted what, nevertheless, has since happened, that the very near relative of the one should actually die by the common hangman for forgery, and the equally near relative of the other should be obliged to fly from his country to avoid the same fate.' How many are in prison who felt as secure as the most virtuous! 'When I look around upon these men,' said the warden of the Massachusetts State Prison to the writer, 'I often think that I might have been one, had I been placed in their circumstances.'

And even innocence has suffered.* But the mind is overwhelmed at the thought. There the law stands all ghastly and bloody! There is the judge ready to pronounce the sentence! There is the cold, unfeeling

* See Essay X., on the Irremediability of Capital Punishments.

sheriff ready to do its bidding. We have never seen the office of hangman and judge more graphically described than in the following :

INTERVIEW BETWEEN THE HANGMAN AND THE JUDGE.

Did your lordship ever attend, at *killing time*, at the old Bailey? If not, pray favor me with your company—not on the gallows, but staying in the street amid a crowd that always assemble when I am at work for you and the sheriff. Perhaps it will add to the zest, if you come when I have a young woman to stiffen, supplied by yourself. Will the fluttering of the petticoats, as she swings in the wind, produce a pleasant sound in your ears, my learned master? Fail not to watch the people—the men, women, and children—good, bad, and indifferent, who have gathered to behold the sacred majesty of the law. You will see such flashing of the eyes and grinding teeth—you will hear sighs and groans, and words of rage and hatred, with fierce curses on yourself and me; and then laughter, such as it is, of an unnatural kind, that they will make you sick! You will *feel*—no—why *you* feel more than your faithful journeyman? We shall go to our breakfasts with good appetites and a firm conviction that every hanging but changes many sneaking pilferers into savage robbers, fit for murder.

A few years ago I was called out of town to hang a little boy who had been convicted of killing with *malice aforethought*. If guilty, he must have been in the habit of going to executions. Ten thousand came to dabble in the poor creature's blood. This was the youngest fellow-creature I ever handled in the way of business, and a beautiful child he was too, as you have seen by the papers, with a straight nose, large blue eyes, and golden hair. I have no heart, no feelings;—who has in our calling? But those who came to see me strangle that tender youngster, have hearts and feelings as we once had. *Have*—no, had; for this, they saw, was fit to make them as hard as your servant or his master.

They saw that stripling lifted, fainting, on to the gallows, his *smooth cheeks of the color of wood ashes, his little limbs trembling, and his bosom heaving sigh after sigh, as if the body and soul were parting without my help.*

This was downright murder, for there was scarcely any life to

take out of him. When I began to pull the cap over his baby face, he pressed his small hands together, (his arms, you know, were corded fast to his body,) and he gave a beseeching look, just as a calf will lick the butcher's hand. But cattle do not speak; the creature muttered, 'Pray, sir, don't hurt me.' 'My dear,' answered I, 'you should have spoken to my master. I'm only the journeyman, and must do as I'm bid.' This made him cry, which seemed to relieve him, and I do think I should have cried myself, if I had not heard shouts from the crowd, 'Poor lamb!—shame,—murder!' 'Quick,' said the sheriff. 'Ready,' said I. *The reverend gentleman* gave me the wink; the drop fell—one kick—and he swayed to and fro, *dead as the feelings of the Christian people of England.*

The crowd dispersed, some swearing, some weeping, as if hell had broke loose, and some laughing, while they cracked blackguard jokes on you and me, the parson, and the dangling corpse. They had come for the sight; they would have come to see an angel murdered. They came to get drunk with strong excitement; they went back reeling and filthy with the hot debauch. They had come to riot in the passions of fear and pity; they went back, some in a fever of rage, some burning with heat, some hardened in the heart like me, or you; all sunk down in their own respect, ready to make light of pain and blood, corrupted by the indecent show; and more fit than ever to make work for us, the judge and the hangman.

O, wise law-makers! who think to soften the hearts of the people; to make them gentle and good; to give them a feeling of respect for themselves and others, by showing them a sight like this!—*English paper.*

INCIDENT OF ROBINSON AND HIS CHILD.

When the little boy was removed from his cell, he remembered, when too late, that he had not bidden him farewell. He cried out, 'I did n't wish him good-by! I shall never see him again in this world.' He burst into tears, sat on the floor of his cell, and wept bitterly over two hours!

ESSAY VII.

EFFECT OF ABOLISHMENT.

Rome—Russia—Bombay—Belgium—Tuscany—Objection of Cæsar—Singular confession of Buonaparte.

‘Away with the executioner and the execution, and the very name of its engine! not merely from the limbs, but from the very thoughts, the eyes, the ears, of Roman citizens!—for not alone the occurrence and the endurance of all these things, but also the liability, the apprehension, even the mere mention of them, are unworthy of a Roman citizen and a free man!’

CICERO.

IN various parts of our labor, we have endeavored to show that the punishment of death tended strongly to weaken the doctrine of the sacredness of human life, and to destroy the morals of society. We intend now to take still higher ground, and show that community is actually more prosperous and happy where the law has been abolished. A few examples from history must suffice.

ROME.—We are told that, for two centuries and a half, throughout the better age of the Roman republic, that the infliction of the punishment of death was expressly forbidden by the famous Porcian law, passed in the four hundred and fifty-fourth year of Rome, by the tribune Porcius Lecca.* It is true there were exceptions. The exile of Cicero turned upon the violation of this law, in his infliction of this punishment upon the Catilinarian conspirators. And in the case of Manlius, whose courage had delivered Rome, but who was precipitated from the Tarpeian rock when his ambi-

* Livy, x. 9. Cicero pro Rabirio, iii. 4: In Verrem, v. 63; Sallust, Cat. 51. See Adam's Roman Antiquities.

tion aspired to tyranny. And, in respect to its operation, 'The penal laws of the kings and those of the Twelve Tables were nearly abolished during the republic,' says Montesquieu, 'either in consequence of the Valerian law, made by Valerius Publicola, shortly after the expulsion of the kings, or else in consequence of the Porcian law. The republic was not the worse regulated, and no injury was done to the police.' 'In this period,' writes Blackstone, 'the republic flourished: under the emperors severe punishments were revived; and then the empire fell.'

RUSSIA.—The empress Elizabeth, on ascending the throne, pledged herself never to inflict the punishment of death, and this pledge she kept for twenty years. From that day to the present, only two occasions have occurred in which it has been inflicted; once, under Catharine, upon a notorious brigand chief, who had long defied the government, and at the commencement of the reign of the present emperor Nicholas, to suppress a rebellion which had filled the streets with blood. Five of the thirty leading nobles were put to death, rather as a political measure than as one of ordinary social justice. 'The Count de Ségur, on his return from his embassy at St. Petersburg, in a letter published in the *Moniteur*, in June, 1791, declared that Russia, under the operation of this law, was one of the countries in which the least number of murders was committed,—adding that Catharine herself had several times said to him: "*We must punish crime without imitating it; the punishment of death is rarely anything but a useless barbarity.*"'

A writer, whom we take to be O'Sullivan, says, 'The Russian representatives in this country, with whom we have conversed, have borne a similar testimony, as to the comparative infrequency of murders, in view of the vast multitudes and rude character of the population; and stated that all the intelligent public opinion there is perfectly settled on this subject, no one thinking of returning to the death-punishment.*'

'Blush! ye countries of a longer civilization,' says a Russian writer, 'that Russia should teach you the celestial principle of reforming depraved morals, not by the sanguinary execution of

* For some very able remarks and documents on the subject of the Punishment of Death, see Democratic Review, March and April, 1843.

inexorable justice, but by the mild and divine precepts of heavenly mercy.’*

The punishment of death was removed a century ago by the empress Elizabeth. ‘Experience demonstrates,’ she says, ‘that the frequent repetition of Capital Punishment never yet made men better. If, therefore, I can show that, in the ordinary state of society, the death of a citizen is neither useful nor necessary, I shall have pleaded the cause of humanity with success.’

Her reign did more to exalt the nation than all the pomps of war and victory achieved by her greatest conquerors.

BOMBAY.—Sir James Mackintosh, in his farewell charge to the grand jury of the supreme court at Bombay, July 20, 1811, presents the following facts:

Since my arrival here, in May, 1804, the punishment of death has not been inflicted by this court. Now, the population subject to our jurisdiction, either locally or personally, cannot be less than two hundred thousand persons. Whether any evil consequence has yet arisen from so unusual (and in British dominions unexampled) a circumstance, as the disuse of Capital Punishment, for so long a period as seven years, or among a population so considerable, is a question which you are entitled to ask, and to which I have the means of affording you a satisfactory answer.

From May, 1756, to May, 1763, (seven years,) the capital convictions amounted to one hundred and forty-one, and the executions were forty-seven. The annual average of persons who suffered death was almost seven, and the annual average of capital crimes ascertained to have been perpetrated, was nearly twenty.

From May, 1804, to May, 1811, there have been one hundred and nine capital convictions. The annual average, therefore, of capital crimes legally proved to have been perpetrated during that

* Travels in Kamschatka and Siberia, &c. By PETER DOBELL, councillor of the court of His Imperial Majesty, the emperor of Russia. London, 1830.

period, is between fifteen and sixteen. During this period there has been no capital execution.

But, as the population of this island has much more than doubled during the last fifty years, the annual average of capital convictions ought to have been *forty*, in order to show the same proportion of criminality with that of the first seven years. And between 1756 and 1763 the military force was comparatively small. A few factories or small ports only depended on this government. Between 1804 and 1811, five hundred European officers, and probably four thousand European soldiers, were scattered over extensive territories. From May, 1797, to May, 1804, there were eighteen convictions for murder, of which I omit two, as of a very particular kind. In that period there were twelve capital executions.

From May, 1804, to May, 1811, there were six convictions for murder, omitting one which was considered by the jury as in substance a case of manslaughter with some aggravation. The murders in the former period were, therefore, very nearly *as three to one* to those in the latter, in which no capital punishment was inflicted.

This small experiment has, therefore, been made without any diminution of the security of the lives and property of men. Two hundred thousand men have been governed for seven years without a Capital Punishment, and without any increase of crimes. If any experience has been acquired, it has been safely and innocently gained.*

BELGIUM.—Capital Punishment has been practically abolished here since 1829. Mr. Hume stated in parliament, in May, 1837, that, in visiting a prison in which he found several persons who had been condemned for capital offences, he ‘learned from the officer superintending it, that, from his experience, the abolition of Capital Punishment tended greatly to soften the disposition of the mass of the people.’ Mr. Ewart, a member of parliament, made the following statement :

* See a work on the Punishment of Death. By THOMAS WRIGHTSON. p. 55. London: 1837.

In 1834, the population of France and Prussia was fifty millions, yet the number of Capital Punishments in those countries in that year amounted to only seventeen; while, in England and Wales, the population of which was only fifteen millions, the executions were thirty-four. This was a proof that, as the criminal code was less sanguinary, crimes became less frequent. For five years, ending in 1829, the executions in France amounted to three hundred and fifty-two, and the trials to one thousand one hundred and eighty-two; but in the five years ending in 1834, when the punishment of death was very much lessened, the executions were one hundred and thirty-one, and the trials one thousand one hundred and thirty-two;—thus showing that, as Capital Punishment decreased, crimes also decreased. This was shown in the case of Belgium. In the four years ending 1829, the executions were seventeen, and the trials forty-nine; while, in the four years ending in 1834, there were no executions, and yet trials had decreased, for they were then only forty-one.

To show that crimes diminish with the abolition of the punishment of death, we present the following, taken from the official tables:

Abstract of Returns printed for the Chamber of Deputies.

| PERIODS. | CAPITAL CONVICTIONS. | | | EXECUTIONS. |
|-------------------|----------------------|---------------|--------|-------------|
| | Murder. | Other crimes. | Total. | |
| Five years ending | | | | |
| With 1804, . . . | 150 | 203 | 353 | 235 |
| “ 1809, . . . | 82 | 70 | 152 | 88 |
| “ 1814, . . . | 64 | 49 | 113 | 71 |
| “ 1819, . . . | 42 | 29 | 71 | 26 |
| “ 1824, . . . | 38 | 23 | 61 | 23 |
| “ 1829, . . . | 34 | 40 | 74 | 22 |
| “ 1834, . . . | 20 | 23 | 43 | None. |

M. DUCPETIAUX, the inspector general of prisons, in his *statistique de la Peine de Mort*, has shown conclusively that, with the decrease of executions, the most dangerous and malignant crimes diminish. He takes

the seven provinces of Belgium, and presents the following result :

| BELGIUM. | EXECUTIONS. | MURDERS. |
|-------------------------------|-------------|-----------------------|
| In 19 years ending with 1814, | 533 | 393, or 21 per annum. |
| In 15 years ending with 1829, | 72 | 114, or 8 per annum. |
| In 5 years ending with 1831, | None. | 20, or 4 per annum. |

We see here that the mitigation of the penal code, instead of emboldening men to commit crime, produces an opposite effect. Violence familiarizes the popular mind with the shedding of blood. Infuse mildness into human morals, and protection is restored to life.

ENGLAND AND WALES.—While writing on this subject, a very important document has just come to hand, which was presented to the British parliament. It comprises seven tables, and presents abundant proof, to employ the words of the report, 'that the penalty operates much more powerfully as an example of homicide for imitation, than as an example of terror to deter; and is, in fact and truth, a cause of the commission of murder.'

The first table gives the commitments and executions for murder during the thirty years ending December, 1842, divided into five periods of six years each. They show that, in the last six years, with only fifty executions, the commitments for murder were fewer by sixty-one, than in the six years ending December, 1836, with seventy-four executions; fewer by sixty than in the six years ending December, 1830, with seventy-five executions; fewer by fifty-six than in the six years ending December, 1824, with ninety-one executions; and fewer by ninety-three than in the six years ending with 1818, when the executions amounted to the large number of one hundred and twenty-two.

The following are the results of **Table III** :

| | |
|--|-------------|
| That in the years following the execution of all convicted, the commitments for murder, as compared with those of the previous year, decreased | 3 per cent. |
| Table IV., shows in the years following commutation, the commitments for murder decreased | 35 do. |
| Table V., that in the years following acquittals on the ground of insanity, the commitments for murder decreased | 33 do. |
| Table VI., that in the years following those in which there were commitments and no conviction, the commitments decreased | 23 do. |

TUSCANY.—Here we find the most satisfactory proofs of the practical advantages resulting from the abolition of Capital Punishment. The grand duke, Leopold, ascended the throne in 1765, and, governed by the enlightened counsels of Beccaria, he commenced a general reform of the penal code. After showing that ‘the proper objects of punishment’ are ‘the redress of injury’ and ‘the correction of the delinquent,’ and that he ought to be ‘regarded as a child of the state,’ and that his ‘amendment ought never to be abandoned in despair,’ he goes on to decree in the following language :

We have resolved to abolish, and by the present law do abolish, forever, the punishment of death, which shall not be inflicted on any criminal, present or refusing to appear, or even confessing his crime, or being convicted of any of those crimes which in the laws prior to these we now promulgate, and which we will have to be absolutely and entirely abolished, were styled capital.

Let us now look at the effects of this experiment. M. Berenger, in his report to the French Chamber of

Deputies, in 1830, says the punishment of death was abolished during a period of twenty-five years in Tuscany, 'and the mildness of the penal legislation had so improved the character of the people there, that there was a time when the prisons of the Grand Duchy were found entirely empty. Behold enough to prove sufficiently that the abolition of the punishment of death is capable of producing the most salutary effects.' Mr. Livingston says, 'that in Tuscany, where murder was not punished with death, only five had been committed in twenty years; while in Rome, where that punishment is inflicted with great pomp and parade, sixty murders were committed in the short space of three months, in the city and the vicinity.'

M. Carmignani, a distinguished professor of criminal law in the University of Paris, also demonstrates the happy effects attending the abolition of the punishment of death.*

In a treatise upon public punishments, read to a society that met at the house of FRANKLIN, in the year 1787, we find the following: 'A gentleman, who resided five years at Pisa, said that only five murders had been perpetrated in his dominions in twenty years since the abolition.'

* See the *Recueil des Débats*, &c. By M. LUCAS. Paris: 1831; pp. 19, 149.

† See the whole treatise in a work entitled 'Essays, Literary, Moral and Philosophical. By BENJAMIN RUSH, M. D.' We had occasion to remark, in our first essay, that the sentiments were attributed, by Livingston and other eminent jurists, to FRANKLIN himself. If it were intentional, it was probably thought to add to their authority, forgetting that the name of RUSH will always be dear to all the lovers of humanity; as he was among the first in America to urge the mitigation of our penal code and the abolition of slavery.

We close our testimonies by citing the words of the grand duke of Tuscany himself, after the experiment had been tried :

With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to a most scrupulous attention to prevent crimes, and, also, a great despatch in the trials, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare.*

We have been particular in reference to Tuscany, because the experiment has been faithfully tried there, and because the Rev. Mr. Cheever, of New York, in reply to O'Sullivan, has alleged its entire failure. He refers to it in a very triumphant manner. We regret to see such a spirit. We do not impugn his motives, but we mean to make the remark general. Surely, we have had the reign of blood, and chains, and gibbets long enough. Society is slow enough in making innovations, especially where *human life* is concerned, which is far less sacred in this speculating age than PROPERTY. But the time will come, when 'a man will be more precious than fine gold, even a man than the golden wedge of Ophir.' Mr. Cheever says, 'The experiment proved so unsatisfactory, that the government restored the penalty of death for the restraint of crime.' To confirm his statement, he presents a letter from a resident on the spot in Florence, near the time when the statute was re-promulgated.

* See a Selection of articles from the London Morning Herald, vol. ii. pp. 246, 376. Also, a report, in favor of the abolition of the punishment of death, to the New York Legislature, p. 104. 1841. By J. O'SULLIVAN.

We do not deny that the punishment of death has been restored, neither does his opponent, Mr. O'Sullivan, in the debate in the tabernacle, at New York. But before Mr. Cheever had triumphed, it would have been as well to have become acquainted with the circumstances. M. Carmignani says, 'that the re-establishment of the punishment was chiefly through the power of the absolute will of Bonaparte, in 1795. And its re-enactment, by his penal code, for Italy, in 1806, was the result of an intrigue of a bigoted and prejudiced clique, in opposition to the wishes of all the magistrates, to the views of all the enlightened jurists of the country, and to all the evidence which their recent experience has afforded.' Leopold succeeded to the empire in 1790. 'It is infinitely to be regretted,' says O'Sullivan, in his able report, 'that the great reform thus successfully begun by him, should, at about that period, have undergone the fate, of course unavoidable, of being drowned in the deluge of blood poured over all Europe by the national struggles and convulsions of which the French Revolution was the signal; and that whatever was left of it from that fate, was crushed out by the war-shod heel of the great soldier, whose memory the friends of the cause of liberty and humanity have so much reason, with the same breath, to bless and to curse.' Here, then, we see the reason of its restoration. It was effected by the absolute will of Bonaparte, the great tyrant, who desolated kingdoms with a word, and who was the means of murdering about six millions of our race! Mr. Cheever, is, indeed, welcome to rejoice at the re-enactment of the bloody law by such a man. But the real motive is not generally known. We have been so fortunate as to obtain the very language of the tyrant himself. We have

come into possession of a letter, written by the Hon. EDWARD LIVINGSTON, to the Hon. T. PURINTON, member of the senate of Maine, dated New York, Dec., 1835. After urging several reasons for the abolishment of the punishment of death, he proceeds to meet the very objection urged by Mr. Cheever:

Why, it may be asked, if the abolition in Tuscany was attended with such beneficial results, why was it not continued? Why was the punishment of death restored? It was restored because an enlightened and humane sovereign was succeeded by a foreign conqueror. It was known that the code of Leopold was abolished by the French conquest; but the policy of the conqueror has just been disclosed. A late paper, printed in Paris, has just been sent to me. It contains the review of a work lately published by Louis, the brother of Napoleon, in which the principles of the emperor, on the subject in question, are laid open in the following extract from the work, in which the author gives his reasons for declining the sovereignty of Tuscany, which his brother offered him.

‘In the conference at Mantua, I asked him (the emperor) whether he would permit me to govern the kingdom which he proposed to confide to me, entirely after my own fashion, so far as it regarded the interior, provided I left the whole exterior relations to him? “I understand you,” he replied, “and will answer you in the spirit of frankness with which you have spoken. In the interior, as in the exterior, all belonging to me must follow my orders. You wish to act the Medicis at Florence: no! this cannot be. You, in my place, would act precisely as I do now. *The interest of France is the point to which everything must tend;—codes, taxes, and conscriptions,—everything in your kingdom must be to the profit of mine. If I allowed you to make Tuscany happy and tranquil, all travellers from France would envy it.*”’

Thus, we see that the great experiment of Leopold was given up when it had had the result the most glorious for humanity, because it would have made Tuscany happy, and excited the envy of France.

What a singular reason for restoring the punishment of death! What a great fact is proved by this confes-

sion! 'If I allowed you to make Tuscany happy and tranquil, all travellers from France would envy it!' And how did the tyrant intend to prevent that happiness? Was it by continuing the state of things brought about by abolishing Capital Punishment? No. It was by restoring the cruel law. Everything must be sacrificed to France. '*The interest of France is the point to which everything else must tend, codes, taxes and conscriptions!*' Here is revealed the true spirit of those who are governed by human policy, and who strive to build up earthly kingdoms. No matter who perishes so long as the throne stands! And what tyrant on earth could reign a single moment if the law of the punishment of death were abolished?

ESSAY VIII.

DANGEROUS TO LIBERTY.

Connection of subject with human freedom—Declaration of rights—Suicide-office—History—No republic founded on inviolability of life—Difficulty of defining treason and heresy—Emmet and Washington—Danger of the author under some forms of government—Length of charges against O'Connell—Treason in reign of Henry VIII.—Story of Prince David—Colonel Dawson—Singular fact in reference to Mr. Dorr, in Rhode Island, respecting treason—French revolution—Robespierre's speech against Capital Punishment—Son of God a victim to this law—Stories of Colonel Hayne—Mrs. Gaunt—Lady Lisle—Testimony of La Fayette.

'Those who ask for the adjournment of this proposition have not had the misfortune to see their families dragged to the scaffold. I am, for my part, the enemy of the punishment of death, and, above all, the enemy of the punishment of death in political matters.'

LA FAYETTE.

Few persons are aware of the inseparable connection between the doctrine of the Inviolability of Human Life and religious and civil freedom. There is no permanent security for any sect or party in a state of society where this sentiment is not acknowledged. Even the most innocent* may be condemned, especially during periods of great excitement. We feel, then, that we are doing a work of humanity; that we are attempting to lay a broader foundation for the whole social fabric; one not to be laid amid the sufferings and groans of our fellow-beings; one not cemented by blood and tears, but resting on the immutable principles of truth.

* See Essay X., on the Irremediability of Capital Punishment.

Our Declaration of Rights says that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.' But, is our right to life secured while the doctrine of the inviolability of human life is denied? It may be said that it was the great design of the framers of our constitution to secure this right. We freely admit that such was the object; but, then, we have inwoven in all our laws, civil and martial, the life-taking principle; thus, building up with the one hand, and throwing down with the other. It may be said, that, as members of the compact, we agree to give up a certain portion of our rights. Admitting this compact, we have shown, in our first essay, that man could not give the right of life to any being or government, for he has no right to take his own life; and, of course, cannot give it to another. We have shown,—and we wish the advocates of the present law would look at this point,—that, to be consistent, they must maintain suicide to be justifiable; an act which many of them think punishable with eternal death. In order to sustain this mode of punishment, M. Urtis, in France, actually maintained the justifiableness of suicide.* Let the advocates of this cruel law, then, be consistent, and make regulations and enactments respecting the time when a man may take his own life, whether in youth, manhood, or old age! Would it not be well to have the best method pointed out,—whether drowning, hanging, beheading, or shooting, is the easiest mode? And would it not be well to have certain men duly elected for this work, and have a sort of suicide-office?

* See Essay I., p. 18.

The hangman might be appointed, as he has not much to do at present. We hope we shall not be accused of levity on a subject so solemn in its nature; for, really, we have never felt more deeply than since we have turned our attention to this subject. We feel that its bearings are not seen nor understood.

It may be said that we are in no danger; that liberty is secured; that it has been purchased by the blood of our fathers, and that we shall never have a revolution that will overthrow our institutions. Yes; but our very boasting may be our destruction; the very manner in which our liberties were obtained, may be the reason why they may be destroyed. Whatever is obtained by violence may be taken away in the same manner. How little is that solemn declaration considered, that dropped from the lips of the great Teacher, even while one of his disciples held the sword in his hand: 'All they that take the sword shall perish by the sword.' How much is contained in this declaration! Would that its solemn import might sink deep into the heart of every sovereign and every legislator.* But why should we consider our government safe? Are not the same passions at work that have overthrown every republic? Does not the tide of party spirit even now run so high that life is endangered? Look into the religious world. See the fires of persecution still burning upon the altar! And may there not be some turn, either in the religious or political world, that shall make even our streets flow with blood? Let us take warning from the past. History

* Here, as in other instances, we find our remarks leading to the subject of War. But we have preferred to present that in a work on which we are now engaged.

is little else than a record of human follies and crimes. The tears, and sighs, and groans, of the widow and the orphan have been disregarded. Let us consider the scenes of by-gone days. We look now at the revolutions in our world, at the downfall of republics, yet imagine we are safe ; but what was the cause of their destruction ? Did they not admit, in all their laws, the punishment of death ?* Was not this bloody law called into action whenever it suited the reigning tyrant or dominant party, either when political or spiritual despotism had the ascendancy ? for the remarks that will apply to the one are equally applicable to both. For, what is treason ? What is heresy ? Who is to define either ? † By looking at history, we

* Rome, we know, for two centuries and a half, abolished Capital Punishment in her criminal code. And what was the result ? BLACKSTONE says, 'In this period, the republic flourished : under the emperors, severe punishments were revived, *and then the empire fell.*' We think we are safe in saying, that no republic, either ancient or modern, has ever recognized the true doctrine of the Inviolability of Human Life. We ought, perhaps, to except that of WILLIAM PENN, 'who,' says VOLTAIRE, 'made the only treaty that ever was made without blood, and the only one that never was broken !' See p. 214 of this work.

† The author, while writing this very chapter, would be indicted, under some forms of government, for high treason, and if he were not carried to the flames himself, his works would probably meet that fate. Every tyrant has clung to this form of punishment with a death-grasp ; for, without it, no tyrant on earth could remain upon his throne ; though, while it is his security on the one hand, it is his terror on the other. And then, again, from the peculiarities of his faith, the author might be considered a heretic ; thus making himself an object of vengeance, both among political and spiritual despots. We respectfully ask the advocates of Capital Punishment in what manner they would dispose of such a case. Perhaps they would try to make the old adage true, 'to be hung and pay forty shillings.'

To illustrate the difficulty of defining treason, Mr. RANTOUL, an eminent jurist, informed the writer that he had five huge volumes on that

shall see 'that treason and patriotism are convertible terms, and that it is success or failure that crowns the adventurer with laurels, or brands him with infamy.' What was treason in Emmet was patriotism in Washington. Indeed, how many instances have happened where the individual, in different periods of his life, has been sometimes the traitor and sometimes the patriot. How frequently was that the case in the French Revolution; an event which shows, in the most solemn manner, the evils attending the punishment of death. Each party was afraid of the other, and each, in its turn, contending for the continuance or abolishment of the punishment of death, as the party gained or lost the ascendancy. But we cannot dwell on the scenes connected with that event. All know that the guillotine was a mere engine of war, ready to lift its bloody axe upon the head of any one whom the triumphant party should deem to be the traitor. 'More and Fisher, Sidney and Russell, died the death of traitors; while Henry Tudor ascended the throne, and Cromwell attained a power greater than that of many kings. Ney and Labeydoyere perished for adhering to the army and the nation, against a family hated by both; while men who had voted for the death of Louis XVI. were honored with offices of the highest trust under his legitimate successor.' But, to look at home; even Washington, Hancock, Adams, and the whole host of revolutionary patriots, would have died as traitors if America had not triumphed. 'The Hungarians were first called rebels,' says Bolingbroke,

very subject. And a fact has just come to hand, from Ireland, that the charges against O'CONNELL, for conspiracy against the English government, covered thirty-three skins of parchment, and occupied seventy hours in the reading.

'for no other reason than this, that they would not be slaves.' Under this head, all the reformers and the patriots in our land would be considered traitors!

How evanescent is all human applause! To-day, a king; to-morrow, a malefactor! To-day, the shouts of the multitude; to-morrow, the reproaches of the world! The history of all reformers, even Jesus himself, shows that no dependance can be placed upon popular favor. It is fickle as the wind; evanescent as the passing cloud; fading as a rose, and empty as a bubble.

In the time of Henry VIII., clipping an English shilling, *or believing that the king was lawfully married to one of his wives*, was no less than high treason. The heart of the offender was torn out from his living body, dashed in his face, and then burnt! It was inflicted upon prince David, a Welsh patriot, in the reign of Edward First, in 1283.* It was the law for about five hundred years afterward!

By referring to the appendix, it will be seen that

* A very affecting account is given of this mode of punishment in Shenstone's ballad. Eighteen persons were convicted for treason. Colonel Townly was the first that was laid on the block, but the executioner, observing the body to retain some signs of life, struck it violently on the breast, for the humane purpose of rendering it quite insensible to the remaining part of the punishment. This not having the desired effect, he cut the unfortunate gentleman's throat. The shocking ceremony of taking out the heart and throwing the bowels into the fire, was then gone through, after which the head was separated from the body with the cleaver, and both were put into a coffin. The rest of the bodies were thus treated in succession; and, on throwing the last heart into the fire, which was that of young Dawson, the executioner cried, 'God save King George!' and the spectators responded with a shout.

A young lady of good family and handsome fortune had, for some time, extremely loved, and been equally beloved by, Mr. James Dawson, one of those unfortunate gentlemen who suffered at Kennington

treason is a capital offence in every state in the Union, except Rhode Island. An overruling Providence had so arranged affairs, that, by the efforts of a single individual, a principal actor in the late movements, the law was some years since abolished.* We may easily conceive what might have been the result had not such a change taken place. Mr. Rantoul very justly remarks that, 'in a collision between a state and the federal government, in case of rebellion, organized

Common, for high treason; and had he been acquitted, or after condemnation found the royal mercy, the day of his enlargement was to have been that of their marriage.

Not all the persuasions of her kindred could prevent her from going to the place of execution; she was determined to see the last hour of a person so dear to her; and accordingly followed the sledges in a hackney coach, accompanied by a gentleman nearly related to her, and one female friend. She got near enough to see the fire kindled which was to consume that heart which she knew was so much devoted to her, and all the other dreadful preparations for his fate, without being guilty of any of those extravagances her friends had apprehended. But when all was over, and she found that he was no more, she drew her head back in the coach, and crying out, 'My dear, I follow thee—I follow thee!—sweet Jesus, receive both our souls together!'—fell on the neck of her companion, and expired in the very moment she was speaking.

That excess of grief, which the force of her resolution had kept smothered within her breast, it is thought, put a stop to the vital motion, and suffocated at once all the animal spirits.

* It is a singular fact that this law was abolished mainly by the efforts of Mr. Dorr himself. Little did he imagine the bearing the law might have upon his own fate. It adds another to the thousand instances of the danger to be apprehended from the existence of the law of the punishment of death, and shows, incontestibly, that society should sanction no penalty that may be used to the destruction of its citizens. Let us beware, then, how we sharpen the axe and prepare other instruments of death for the hand of party violence. Every nation has wept over the graves of patriots and heroes sacrificed by its own fury.

under the state authorities, a state treason law would come into action. Under its provisions, the man who adhered to his oath of allegiance to the United States, might be hanged for his fidelity, while, in retaliation, he who obeyed the state authorities might be hanged by the general government for treason against them.'

It is said, if we succeed in abolishing this cruel mode of punishment, it may be restored in times of party-excitement. But it is far easier to pervert an existing law to the oppression of the innocent, than to revive, for such a purpose, a punishment which had been solemnly abrogated. Let us suppose the punishment of death had been abolished in France in the year 1700; and that the whole population had been educated in the idea that human life was too sacred ever to be taken for the most atrocious crimes; that the life of every citizen was inviolable. Is it probable that such a people, in 1792, would have butchered not only the innocent, but the most worthy members of their community?

It is a very singular fact, showing the mutability of all human affairs, that, at one period in the history of France, even Robespierre himself was strongly opposed to the punishment of death, insomuch that while holding the office of judge, he resigned, rather than to pronounce sentence of death upon a criminal. The following is his language from a speech which gained the prize:—'The law should always present to the people the most perfect model of justice and reason. If, in the place of that powerful severity, of that calm moderation, which ought to characterize them, they substitute anger and vengeance; if they cause to flow human blood which they might spare, and which they have not the right to shed; if they display before the

eyes of the people scenes of cruelty, and corpses murdered by tortures, they then corrupt in the heart of the citizen the ideas of the just and the unjust; they cause to spring up in the bosom of society ferocious prejudices, which, in their turn, reproduce others. Man is no longer to man an object so sacred; a less lofty idea is entertained of his dignity when the public authority treats so lightly his life. The idea of murder inspires much less dread than before, when society itself presents the example and exhibition of it; the horror of the crime is diminished when society punishes it only by another. Beware well of confounding the efficaciousness of punishments with the excess of severity: the one is absolutely opposed to the other. Everything seconds moderate laws; everything conspires against cruel ones.' 'What might not France and the world been spared, had these sentiments prevailed? They were advocated in the assembly, but the orators were put down by the clamors of the fierce galleries, like vultures scenting their prey from afar.'

We admit that this mode of punishment may be re-established, but then it will be more and more difficult as society is taught the sacredness of human life. This law is a weapon, ready prepared, which is more susceptible of abuse than any other. An attempt to introduce it after its abolishment would be such an innovation that an alarm would be sounded.

We forget that even the Son of God suffered by a perverted use of this law. The Jews did not venture to demand his death of the Roman governor without the forms of law and the semblance of justice. When Pilate found 'no cause of death in him.' they appealed to their own laws, saying, 'we have a law, and by our law he ought to die.' Thus the punishment of death

became the pretext for the greatest crime ever perpetrated in our world; a deed so foul that it is not yet expiated, though the guilty nation have been, for eighteen centuries, exiles and vagabonds upon the face of the earth, a by-word and a reproach, 'their own house left unto them desolate.'

We are overwhelmed with the thoughts that rush into the mind when we consider the horrid use that may be made of this form of punishment. Had it not been for the contempt of human life which it has taught the community, 'there would have been no fires at Smithfield, no massacre of St. Bartholomew, no reign of terror in the first French revolution. Cranmer would not have been led to the stake in his old age, nor Stafford to the scaffold in the full vigor of life and usefulness; Lavoisier might have lived to enlighten the world by his science; Condorcet to instruct by his learning, and Malesherbes to improve it by his virtues.'*

* How little do we think of the influence of Capital Punishment upon the surviving relatives! How many affecting scenes must there have been in the French revolution! How many sighs and groans! How many tears unnoticed, except by Him who regards even the falling of a sparrow. We will give an instance that happened in our own revolution, which will show how cruel death is when he comes in the form to which we have so frequently alluded. The story is that of Colonel Hayne, of South Carolina, who was taken prisoner by the English. He had a wife and six small children. He was very amiable, and a great many interceded for him, but in vain.—During the imprisonment of the father, his eldest son was permitted to stay with him in the prison. Beholding his only surviving parent, for whom he felt the deepest affection, loaded with irons and condemned to die, he was overwhelmed with consternation and sorrow. The wretched father endeavored to console him, by reminding him that the unavailing grief of his son tended only to increase his own misery, that we came into this world merely to prepare for a better, that he was himself prepared

If it be true, then, that the light regard paid to human existence has proved sources of unhappiness, it becomes all in this enlightened age to weigh well their motives when they advocate the punishment of death. We know that even they contend that life will be rendered more sacred by taking that of the murderer. But facts show the contrary. The legal existence of this penalty is not only abused on extraordinary occasions, but it tends to encourage daily a disregard for life, and leads on to murder. If the government would

to die, and could even rejoice that his troubles were so near an end. 'To-morrow,' said he, 'I set out for immortality; you will accompany me to the place of my execution; and when I am dead, take my body and bury it by the side of your mother.' The youth here fell on his father's neck, crying, 'Oh, my father, my father, I will die with you! I will die with you!' Colonel Hayne, as he was loaded with irons, was unable to return the embrace of his son, and merely said to him in reply, 'Live, my son, live to honor God by a good life; live to serve your country; and live to take care of your brother and little sisters.' The next morning, proceeds the narrative of these distressing events, Colonel Hayne was conducted to the place of execution. His son accompanied him. Soon as they came in sight of the gallows, the father strengthened himself, and said, 'Now, my son, show yourself a man! That tree is the boundary of my life, and of all my life's sorrows. Beyond that, "the wicked cease from troubling, and the weary are at rest." Don't lay too much at heart our separation; it will be short. 'T was but lately your dear mother died. To-day I die. And you, my son, though but young, must shortly follow us.' 'Yes, my father,' replied the broken-hearted youth, 'I shall shortly follow you, for, indeed, I feel that I cannot live long.' And his melancholy anticipation was fulfilled in a manner more dreadful than is implied in the mere extinction of life. On seeing his father in the hands of the executioner, and then struggling in the halter, he stood like one transfixed and motionless with horror. Till then, proceeds the narration, he had wept incessantly; but soon as he saw that sight, the fountain of his tears was stanch'd, and he never wept more. He died insane; and in his last moments often called on his father, in terms that brought tears from the hardest hearts.

cease to legalize the shedding of blood, there would then be established in the human mind the great doctrine of the sanctity of human life—that even the days of the criminal are too sacred to be shortened.

We appeal, then, to the politician as well as the religionist, to think deeply and seriously upon this subject. We may think we have outgrown, in the religious world, the doctrine of the stake and the fagot; yet, perhaps, it is because no sect among us possesses the power. Let any political or religious party gain the ascendancy; then they have the weapon ready formed at their hands.* The guillotine may be established, or the fires of Smithfield may again be lighted, or even all the cruelties of the Inquisition may be revived! And this penalty is likely to fall, not on the most corrupt and abandoned, but upon the very best citizens. Not belonging to either party, they are suspected by both, and, therefore, are likely to become the first victims. In view of all these facts, we cease to wonder at the strong language of La Fayette in the motto upon our title: ‘For my own part, I shall demand the abolition of the punishment of death until I am convinced that human judgment is infallible.’

* Numberless incidents occur in history to illustrate this point. During the reign of James II., while the tyrant Jeffries was on the bench, the following took place:—‘A Mrs. Gaunt was noted for her beneficence to all professions and persuasions. One of the rebels, knowing her humane character, had recourse to her in his distress, and was concealed. The abandoned villain, hearing that a reward and indemnity was offered to such as informed against criminals, betrayed her. His evidence was incontestible. He was pardoned for his treachery—she burned alive for her benevolence.’

Another instance occurred, equally terrible. ‘Lady Lisle was proved innocent twice of sheltering two fugitives. But the jury was sent back by Jeffries, with reproaches, and they were constrained to give a verdict against the prisoner.’

ESSAY IX.

FUTURE CONDITION OF THE SOUL.

Appeal to Christians—Conduct of prisoners—Stephen M. Clarke—Cheever's argument—Petition presented by Lord Brougham—Incident at Lechler's execution—Execution of a man eighty-three years of age—Reformation possible—Corinthian church—Apostle Peter—David, king of Israel.

———Who can reflect, unmoved, upon the round
Of smooth and solemnized complacencies,
By which, on Christian lands, from age to age,
Profession mocks performance. Earth is sick
And Heaven is weary of the hollow words
Which states and kingdoms utter when they talk
Of truth and justice.

WORDSWORTH.

WE reach now, in our labor, a part of our subject, which presents some very solemn aspects; so solemn in their nature that language is inadequate; views that overwhelm the imagination, and which we would gladly have passed over, but a sincere conviction of duty calls upon us in the most imperious manner to give it our serious attention. It is a view on which we have thought with the deepest reverence, and we feel to invoke the divine aid while we carefully call to it the attention of the reader.

We do, therefore, in the most solemn manner, and in the fear of God, appeal to that very large and respectable body of Christians,—among whom are to be found many bright examples of piety and learning,—who believe that 'life is but a trial for eternity—that

as man dies, so he remains *forever*, tortured with anguish and polluted with guilt, or blooming in un-fading joy and exalted goodness.'

We have, in all our labor, so far, looked to this subject in reference to temporal things, but now we must turn away from all the fleeting vanities of time, to that world, 'where the wicked cease from troubling, and the weary are at rest.' On such a subject we ought to speak with humility, if not with terror. Let us then look at the facts in the case. We have seen, especially in our article on the effect of public executions, that, generally, those who become guilty of capital offences, become more hardened and indifferent as the day approaches. Mr. Wakefield, who spent several years in prison, says, 'In about one case out of four,* no religious impression is produced; but the prisoner goes through all the ceremonies of his situation with an air of indifference, being occupied to the very last moment with the hope of a reprieve.' He further states, 'that on almost every execution day, on which several are hanged, the chaplain is subjected to the most outrageous insults from one or more of the doomed men. He will readily confirm this statement. And it may be farther proper to say, for the information of religious persons, among those who make our laws, that every year several of their fellow-creatures are cut off in front of Newgate, in the very act of scoffing at God and Christ, and the Holy Sacrament.' We could fill volumes, showing the deadening, paralyzing influence of this mode of punishment upon those un-

* The author of *Old Bailey Experience*, makes the proportion much less. He says that, 'in nineteen cases out of twenty, there is no true repentance; most of them die apparently careless about their former course of life, or of the world to come.'

fortunate beings who are called to suffer. We say unfortunate, for none deserve more pity than those who have no pity for themselves.

Another view is that the criminal may be innocent or morally insane. But, passing over such considerations, we solemnly ask how, in view of all the facts in the case, you can consistently advocate the continuance of a law involving such irretrievably awful results?—one which cuts off a fellow-being in the full vigor of young life and health, and hurries him, red, reeking with guilt, to that last, irrevocable judgment, where you expect to meet him, and on the decision of which you believe hangs the eternal fate of the human soul!*

We know the argument of Mr. Cheever, and other distinguished divines. We give it in his own words. 'In the abolition of this penalty, the number of murders would inevitably be increased; and every individual so murdered is sent into eternity, not with the weeks of preparation, and all the solemn, holy inducements and appliances allotted to the murderer; but in a moment, without a breath for prayer, without time so much as to say, "God be merciful to me a sinner." Now I say, without hesitation, it is worse to send one person into eternity, in this manner, than it would be to send ten murderers with six weeks' warning. But if you were to repeal this penalty of death for murder, then, by the increase of this crime, for every murderer now with solemn warning executed, you would probably be the occasion of sending two or three innocent

* Stephen M. Clarke, who was hung for arson, in Newburyport, some years since, was only seventeen. Amidst his cries and martial music he was forced to the scaffold.

persons, unwarned and unprepared, into eternity. This is an inevitable result of the repeal of this penalty. I say, therefore, that its abolition would be an act of impiety; for the substitution of imprisonment for life would probably make most murderers die in their sins, while it would send many innocent persons unprepared into eternity. I turn this objection, therefore, back with tenfold power upon your own proposed repeal of the penalty of death for murder. It constitutes, in the mind of every benevolent person, one of the very strongest arguments against such a repeal.'

The position should be proved by facts, that murders would inevitably be increased. We have given abundant evidence to the contrary, in our article on the abolishment of this penalty, in Part I., Essay VII. We have shown that the law defeats itself; that it multiplies the very crimes it designs to abolish. In our article on the Scruples of Jurors, we have seen that even petitions were presented by Lord Brougham, in England, in which the petitioners say, 'that they find, by experience, that even *the probability* of the infliction of death prevents the prosecution, conviction and punishment of the criminal, thus endangering the property which it was intended to protect.' This is the case with regard to property. How is it respecting life? We have seen, in our article on the effects of executions upon spectators, that many persons have gone directly from the scene, and committed the very same act. We gave the case, in Lancaster, Pa., of Wilson, who stabbed another, and *had the same irons put on him which had scarcely been laid off long enough by Lechler to get cold.* In view of this fact, the subject becomes still more awful. We again appeal to those who believe that the future condition of the soul

depends upon the state in which it leaves this world. Not only, on your theory, you may send a fellow-being reeking with blood into the presence of his God, but, by increasing murders by the very penalty, you may send many others in the same unprepared state.*

* A case now lies before me, that presents this subject in the most awful light. It is the account of the execution of a man, in his eighty-third year, for the murder of his wife. He was a believer in your sentiment, as it appears from many of his expressions; such as, 'he hoped the parties who condemned him would be overtaken by the vengeance of God, and sent into everlasting condemnation;' 'that God would rain down fire and brimstone.' But I need not present the horrid language he employed. You are familiar with such phrases, though you never intended such a use to be made of them. But look at this case in the light of eternity. Passing over the protestations of innocence in which the poor old man persisted to the last, I earnestly ask you to look at this humiliating spectacle. 'A hoary old man, bent together with age and mental suffering, oppressed with a five months' imprisonment: his whole appearance indicating the utmost degree of human frailty, borne down with the intense idea of grief, and the tears flowing.' Behold him pinioned, while the poor creature says, 'You need not do it very tightly, as I intend to make no resistance. My only wish is to have it soon over.' What a scene! With your views of eternity, how many thoughts overwhelm the mind. By the present law, this poor man, decrepit and bent, so far that the ministers of the law were obliged to procure a chair upon the scaffold, was sent into the presence of his God, reeking with blood. Perhaps, a moment more, and he might have been made an heir of heaven. Stop, we beseech you; pause, think of the awful, irretrievable results according to your faith. How solemn the scene! And if ever your favorite hymn would apply, this would be a fair case.

'Behold, the aged sinner goes,
Laden with guilt and heavy woes,
Down to the regions of the dead,
With endless curses on his head.'

But the subject becomes too solemn for language to describe. When again you lift up your voice in favor of the law of blood, think of the poor old man, just on the brink of eternity, and pause ere you become the means of sending another immortal spirit unprepared into the presence of its Maker!

‘Every execution,’ says Dr. Lushington, in parliament, ‘brings an additional candidate for the hangman!’ We know that some divines have even urged that the law was humane; that the perpetrator has been induced to think seriously of divine things, and led to repentance; and, in his last hours, has confessed the justice of his sentence, and given glory to God. Granting even that such cases have occurred—and they are like angels’ visits, few and far between—still, the law itself appears in no better light. Indeed, it appears cruel, even giving it this favorable view. Monstrous law! To cut off a human being, whose heart had just begun to feel the emotions of returning virtue; whose eyes were just opening to the enormity of his crime! Strange inconsistency! Like the physician, who should recommend that, on the recovery of his patient, he should be murdered! Tender mercies indeed! This is hanging a criminal for very love and kindness.

There is still another serious aspect to our subject. Can we be certain that divine grace may not renew the heart even of the vilest, if life is spared? We cannot extend our remarks on this part of our subject.* We simply observe that, among the most heroic of Christian martyrs, we shall find those who have been the most deeply corrupt. The Corinthian church contained many whose lives had been stained with the blackest crimes. ‘The infallible apostle of the Catho-

* The Author designs to take up this view of the subject in a distinct volume. In his travels, he is now preparing the materials for such a work. His great object, throughout the present labor, was to show the wrongfulness of the punishment of death. He intended to have gone farther, but the great abundance of facts obliged him to confine the present volume to one point. See Appendix, II.

lics,' says one, 'denied his Master;' and the man 'after God's own heart' was saved from a terrible death only by his royal right of sinning. The first effusions of devotional feeling ever perused were written by a repenting murderer. Had the policy which doomed even the worst of criminals to the scaffold, as incapable of correction, been pursued in this melancholy case, the world would have been deprived of the most affecting example of holy penitence and of divine mercy; of the clearest prophecies of a suffering Messiah; of the sweetest consolations that can animate hope or relieve despair; and one of the greatest characters of sacred history sent, covered with guilt and disgrace, to the bar of the Almighty.'

We earnestly and affectionately, in view of all these facts, beseech you to think deeply and solemnly on this awful subject; awful in reference to the present, but more so in reference to the future. If it appears that the criminal is converted, then, surely, you will not cut him off, for he may become again a blessing to the community. If he remain impenitent, surely, then, you will not seal his everlasting misery. If Capital Punishment multiplies murders, as we have proved, then, surely, you will not send any more murdered victims to hell!

ESSAY X.

IRREMEDIABILITY

The argument—Indifference of Paley and Hudson—Case of a surgeon and his servant—Confession not a proof—Instances in England and in Vermont—Complaining for gain—Noticed by parliament—Burkites—Liability of witnesses—Difficulty of disproving a certain charge—Rape—Innocent condemned—Forty-eight hours for criminals after sentence, in England—Property considered more valuable than life—Mock charge of a villain—Trial of the Knapps—Singular remark of Daniel Webster—Execution of the innocent—Innkeeper—A farmer—Instances given by Mrs. Child, Smollet and O'Connell.

'Truth lifts up the veil with which probability had enveloped her—but she appears too late! The blood of the innocent cries aloud for vengeance against the prejudice of his judge, and the magistrate passes the rest of his life in deploring a misfortune which his repentance cannot repair.'

CHANCELLOR D'AGUESSEAU.

AMONG the various arguments that may be urged in favor of our views, that of the Irremediability of Capital Punishment appears to the writer to be the most cogent and convincing. As we have pursued our labor, from day to day, facts of this nature have multiplied, till what appeared at first to be the easiest part of our work, has become the most difficult. Every author knows that the labor of condensing is often more difficult than the attainment of the fact; and that it requires more time to shorten a work than to extend it. We have adopted two rules as our guide. 1. Not to rely on the testimony of prisoners themselves. 2. To present only those cases where execution had actually taken place.

We have been somewhat surprised at the small influence which facts of this nature have had on those who favor the punishment of death. Paley says, 'He who falls by a mistaken sentence, may be considered as falling for his country, whilst he suffers under the operation of those rules by the general effect and tendency of which the welfare of the community is maintained and upheld.' Rev. Charles Hudson, a member of the senate, in 1838, says, 'Though the objection may appear plausible, we think it entitled to but little weight.' An orthodox writer says, 'When an innocent man suffers, all that can be said is, that Providence has seen fit to take away, by a painful exit, one, whom a few years more would have necessarily carried to the tomb.' How coolly the whole matter is turned off! How easy to philosophize and act the patriot for others! How easy to arm ourselves with topics of consolation, and reasons for enduring with fortitude evils to which we think we are not exposed!

In approaching this subject, we have felt a solemnity which is almost too great to allow us to proceed. When we consider how much is embraced in that expression, 'the glorious uncertainty of the law,' we hardly feel safe even while pursuing the most laudable calling; for many have fallen even while engaged in works of humanity. The following case presents this subject in a strong light. In view of such facts, where is human safety so long as the punishment of death exists upon the statute book?

A SURGEON CHARGED WITH THE MURDER OF HIS SERVANT.

A gentleman was tried in Dublin on the 24th of May, 1728, charged with the murder of his maid servant. An opposite neighbor saw him admitted into his house about ten at night, by his ser-

vant, who opened the door, holding in her hand a lighted candle in a brazen candlestick. Not long after, the gentleman made an alarm, exclaiming that his servant was murdered. The woman was found a corpse in the kitchen, her head fractured, her neck wounded so as to divide the jugular vein, and her dress steeped in blood. On further search, the inquirer discovered that the prisoner had on a clean shirt, while one freshly stained with blood, and ascertained to be his, was discovered in the recess of a cupboard; where also was found a silver goblet, bearing the marks of a bloody thumb and finger. The prisoner almost fainted on being shown the shirt. He was executed.

His defence, on trial, was, that the maid servant admitted him as sworn, and went to the kitchen; that he had occasion to call her, but not being answered, went and found her lying on the floor; not knowing her to be dead, and being a surgeon, he proceeded to open a vein in her neck; in moving the body, the blood stained his hands and shirt sleeves. He then thought it best to make an alarm for assistance, but being afraid of the effect which his appearance might produce, he changed his linen, and displaced the silver cup, in order to thrust his bloody shirt out of sight.

This story was deemed incredible. Several years after, a dying penitent confessed to a priest, that he was concealed in the gentleman's house for the purpose of robbing it, at the moment of the gentleman's return; that, hearing him enter, he resolved to escape; that the woman saw, and attempted to detain him; that he, fearing detection, knocked her down with the candlestick she had in her hand, and fled, unnoticed, from the premises.

How much does a cause involve! What knowledge of the human heart! What nice discrimination of character! A touching appeal to the feelings of a jury, a happy retort, or a humorous illustration, has crowned with undeserved triumph many a desperate case. And it is remarkable that even the confession of guilt is not sufficient.* We do not allude to the

* A case is recorded of one who made a confession, and delivered himself up to justice. Circumstances transpired which, notwithstanding

horrid practice, obtaining in ancient times, of torturing the criminal to make him recriminate himself, but when it has been entirely voluntary.

A remarkable case happened in Vermont. It has been cited nearly all over the civilized world, and it has done much to modify our system of criminal jurisprudence. It comes from an authentic source, for the narrator has been long known to the author as a clergyman of high standing and of veracity, WILLIAM S. BALCH, of New York city.

BOURNE CONVICTED OF THE MURDER OF HIS BROTHER-IN-LAW.

A case occurred in Manchester, Vermont. Two men, brothers, by the name of Bourne, were convicted of the murder of a brother-in-law, named Colvin. While under the sentence of death, one of the brothers *confessed* a participation in the murder. By an act of the legislature, his punishment was commuted to imprisonment for life. The other stoutly persisted in asserting his innocence. Great excitement prevailed during and after the trial; I remember it well. It was near my native town. But when the confession was made under oath, and published, none longer doubted. Had he confessed he did *not* assist in the murder, would he have been believed? The day of execution at length arrived. Hundreds of people from the hills and vales were gathered around the gallows, to witness the dying struggles of a poor unfortunate fellow-sinner. The hour had arrived, and the elder Bourne, still avowing his innocence, wan and weak, was led forth into the ring, and stood beneath the horrid engine of death. The sheriff was about to adjust the halter, and draw down the dismal cap, when a cry was heard from behind the ring,—‘Stop! Stop! For God’s sake stop.’ All eyes were directed that way; when, to the astonishment of all, the

ing his confession, led many to doubt his guilt. He at length admitted that he had made up his mind to suffer the punishment in order to claim, upon conviction, a reward which had been offered, and hand it to his starving wife, and children.—*Selections from the London Morning* —*ald*, vol. ii., p. 89.

murdered Colvin was led into the ring, presented to the sheriff, recognised by the assembled neighbors, and greeted by Bourne, with feelings better imagined than described; and the people doomed to return home in disappointment—as some remarked, ‘without seeing the *fun* they anticipated.’

Had Colvin (says Mr. Balch) not been found, for he was in New Jersey, or had some little hindrance delayed his arrival for a single hour, an innocent man would have been hurried out of the world as a felon, leaving a wife, and children, and friends, to lament his untimely death; humanity to weep over the mistakes, and weaknesses, and cruelties, of human legislation; and judges and juries to reproach themselves for taking the fearful responsibility of destroying a life which they could not restore when their errors were clearly manifest.

Instances are not wanting where corrupt individuals have even complained of others for gain. This practice became so prevalent in England, that it attracted the attention of parliament. It was found that, in 1830, there was paid £31,843 8s. 8d., being at the rate of £17 per head. This was very appropriately called *blood-money*, and the individuals *man-hunters*. It was really suggested that the Burkites, who engaged to find subjects for dissection, might find it more profitable to *slay by due process of law!* Three conspirators actually swore away the life of a poor man for £40, which was, at the time, the reward for a highway robber! Alas! what is there man will not do for gold! And how many have been sacrificed for ambition! Hecatombs of human victims have been offered up on the altars of both!

Passing over the fallibility of judges, let us look for a moment at the liability of witnesses to be deceived, or to perjure themselves, or to be corrupted by others. ‘There is,’ as Judge Hales observes, ‘a charge that is

easily made, and difficult to be disproved, resting solely upon the solitary oath of the prosecutrix.' How many have fallen in this way, through revenge or extortion! Mr. Pollock relates an instance of this kind, in which a man was tried for *rape*, and was executed in forty-eight hours.* He was satisfied the man was INNOCENT! It is a maxim in law that a person who has a pecuniary interest in a matter, is not a competent witness, but the most depraved wretch that ever bartered the remnant of a conscience for gold, is permitted to give in evidence against a prisoner where *life is at stake*. An instance is recorded where two men were convicted of a highway robbery, and left for execution, at Lancaster, England, upon the *mock charge* of a villain. The diabolical contrivance was discovered just in time to save their lives! Four others came near losing their lives in the case of a *blood-money* conspiracy! An instance occurred at the trial of the Knapps, in Salem, Mass., a few years since. A man was even brought to testify from the State Prison. He was objected to by some. HON. DANIEL WEBSTER, who was secured as counsel, made the remark, that truth was truth, if it came from the bottomless pit!† And he was admitted. The remark is correct, but it is a singular source to look for truth.

We might multiply facts, but we must find room for

* This seems to have been the usual time, in England, allotted to a criminal, under sentence of death, unless the Sabbath intervened; and to give him a day longer, judges would often manage to pass sentence on Friday!

† This anecdote is given from the impression of the author, though Mr. WEBSTER admitted to him that such a witness was present, but did not distinctly recollect the remark here ascribed to him, though I was at liberty to give it in this form.

several cases where the punishment of death has actually taken place.

EXECUTION OF THOMAS HARRIS FOR MURDER.

The individual kept a public house on the road to Newcastle. He employed a man and maid servant. James Gray, a blacksmith, stopped there for the night. In the morning, he was found dead in his bed. Morgan deposed that he found his master on the stranger's bed, in the act of strangling him, and that he saw him, through a key-hole, rifling his pockets. Harris denied the whole, and was about being discharged, when the maid servant was called, and she deposed that she saw her master take some gold, that morning, and bury it in a private corner of the place. A constable was despatched, and thirty pounds were found! The accused admitted the hiding, but gave his answers so unwillingly, that all doubts of his guilt were removed.

Harris was brought to trial, and plead that the money was his own, and that he buried it for security; and that his behavior arose from the shame of acknowledging his covetousness, and not from guilt. The evidence was summed up, and in *two minutes* the jury found a verdict of *guilty!*

The truth came out, but too late. Morgan the servant, and the maid, were sweethearts. They both knew that their master hid money in the garden, and both agreed, when it arose to a certain sum, to plunder the hiding-place, and marry, and set up in business. One day, Harris struck his servant Morgan, and he determined on revenge. James Gray arrived at this fatal period, and Morgan found him dead the next morning. Morgan and the maid agree to charge the murder upon their master. On the trial, the girl, fearing that her paramour will be punished for perjury, concludes to sacrifice the hidden money and her master, to save him.

The whole of this stupendous wickedness came to light in 1643, in a quarrel between Morgan and the girl, who had lived together as man and wife ever since the death of Harris.

The innocence of Harris was farther evident by its being found that James Gray, the supposed murdered person, had had two attacks of apoplexy, some months previous to his death, and that he was never worth five pounds, at one time, in his life!

The following case, from a London paper, furnishes the strongest arguments to the friends of the abolition of Capital Punishment. At the Surrey Sessions, Mr. Charnoch, who was engaged to defend a prisoner on circumstantial evidence, said such evidence was always dangerous to conviction, and cited the following illustration :

EXECUTION OF A FARMER FOR THE MURDER OF HIS NIECE.

A farmer, who was left executor and guardian, was indicted for the wilful murder of his niece. A serious quarrel took place between them, and the farmer was heard to say that his niece would not live to enjoy her property. Soon after, she was missed. Rumors were quickly spread that she was murdered by her guardian. On being apprehended, blood was found upon his clothes. The judge was persuaded to postpone the trial, and the most strenuous exertions were made to find the niece, but in vain! The prisoner, to save his life, resorted to a step which procured his condemnation and execution within forty-eight hours after his trial. A young lady was produced, exactly resembling the supposed murdered female. Her height, age, complexion and voice were so similar that the witnesses swore to the identity. An intimation was given that the female was not the niece. By skilful cross-examination, the artifice was detected, and the unfortunate man was hung. The unhappy convict declared his innocence, but was rebuked by the clergyman for his hardihood.

In two years after, the niece made her appearance, and claimed the property. It appeared that, the day after the fatal quarrel, she eloped with a stranger to whom she was attached, and she had not been heard of till her unexpected return, and that, by mere accident, she had heard of her uncle's execution.

On looking over the popular work, just issued from the pen of Mrs. CHILD, entitled 'Letters from New York,' we found two cases. They show very conclusively the awful results that flow from our present

law. The case of the poor German is indeed very touching, and is related with the spirit and vigor which characterizes all the productions of the fair authoress :

EXECUTION OF A POOR GERMAN FOR MURDER.

A few years ago, a poor German came to New York, and took lodgings, where he was allowed to do his cooking in the same room with the family. The husband and wife lived in a perpetual quarrel. One day, the German came into the kitchen, with a clasp-knife and a pan of potatoes, and began to pare them for his dinner. The quarrelsome couple were in a more violent altercation than usual, but he sat with his back towards them, and, being ignorant of their language, felt in no danger of being involved in their disputes. But the woman, with a sudden and unexpected movement, snatched the knife from his hand, and plunged it into her husband's heart. She had sufficient presence of mind to rush into the street, and scream murder. The poor foreigner, in the mean while, seeing the wounded man reel, sprang forward to catch him in his arms, and drew out the knife. People from the street crowded in, and found him with the dying man in his arms, the knife in his hand, and blood upon his clothes. The wicked woman swore, in her most positive terms, that he had been fighting with her husband, and had stabbed him with a knife he always carried. The unfortunate German knew too little English to understand her accusation, or to tell his own story. He was dragged off to prison, and the true state of the case was made known through an interpreter ; but it was not believed. Circumstantial evidence was exceedingly strong against the accused, and the real criminal swore that she saw him commit the murder. He was executed, notwithstanding the most persevering efforts of his lawyer, John Anthon, Esq., whose convictions of the man's innocence were so painfully strong, that, from that day to this, he has refused to have any connection with a capital case. Some years after this tragic event, the woman died, and, on her death-bed, confessed her agency in the diabolical transaction ; but her poor victim could receive no benefit from this tardy repentance. Society had wantonly thrown away its power to atone for the grievous wrong.

The following, from the same pen, is indeed affecting. The magnanimous conduct of the poor condemned Burton, to save his loved-one, is finely presented; and also his effort to take his own life, which was prevented for the cruel purpose of taking it away according to law :

TRAGICAL FATE OF BURTON, IN MISSOURI.

A young lady, belonging to a genteel and very proud family in Missouri, was beloved by a young man named Burton; but, unfortunately, her affections were fixed on another, less worthy. He left her with a tarnished reputation. She was by nature energetic and high-spirited; her family were proud, and she lived in the midst of a society which considered revenge a virtue, and named it honor. Misled by this false popular sentiment, and her own excited feelings, she resolved to repay her lover's treachery with death. But she kept her secret so well that no one suspected her purpose, though she purchased pistols, and practised with them daily. Mr. Burton gave evidence of his strong attachment by renewing his attentions when the world looked most coldly upon her. His generous kindness won her bleeding heart, but the softening influence of love did not lead her to forego the dreadful purpose she had formed. She watched for a favorable opportunity, and shot her betrayer when no one was near to witness the horrible deed. Some little incident excited the suspicion of Burton, and he induced her to confess to him the whole transaction. It was obvious enough that suspicion would naturally fasten upon him, the well-known lover of her who had been so deeply injured. He was arrested, but succeeded in persuading her that he was in no danger. Circumstantial evidence was fearfully against him, and he soon saw that his chance was doubtful; but with affectionate magnanimity he concealed this from her. He was convicted and condemned. A short time before the execution, he endeavored to cut his throat; but his life was saved for the cruel purpose of taking it away according to the cold-blooded barbarism of the law. Pale and wounded, he was hoisted to the gallows, before the gaze of a Christian community. The guilty cause of all this was almost frantic when she found that he had thus sacrificed himself to save her. She imme-

dially published the whole history of her wrongs and her revenge. Her keen sense of wounded honor was in accordance with public sentiment; her wrongs excited indignation and compassion, and the knowledge that an innocent and magnanimous man had been so brutally treated, excited a general revulsion of popular feeling. No one wished for another victim, and she was left unpunished, save by the dreadful records of her memory.

It is related by Dymond, in his *Essays on the Principles of Morality*, that, at one assizes, he believed that not less than six innocent persons were hanged.

The following deplorable instance of rape and murder is given by Dr. SMOLLET. It goes far to confirm the view which we have maintained, that public executions have no good effect upon spectators, for here the real criminals actually assisted on the occasion:

‘The victim was an unfortunate woman, in the neighborhood of London. The real criminals assisted at the execution, and heard the innocent man appeal to heaven, while they, in the character of friends, embraced him as he stood on the brink of eternity.’*

The following instances are from a speech made by O’CONNELL, before the London Society for the diffusion of information on the subject of Capital Punishment. And as, at this present crisis, everything from him attracts the notice of the civilized world, and as all true philanthropists are looking to him, in his mighty efforts for the cause of humanity, we give the language ascribed to him:

‘He had long been deeply impressed with the conviction that Capital Punishment ought to be entirely abolished. He could not forget that ‘Vengeance is

* *History of England*, vol. iii., p. 318.

mine, saith the Lord, and I will repay it.' Perhaps it was by the impulse of feeling, and what he conceived to be humanity, that, in the early part of his life, he was brought to this conviction; but long, and he might venture to say, great experience in the criminal law—for no advocate, at least in his own country, had the miserable boast which he could make of the frequency of his practice in that branch—that experience had confirmed him in his opinion, that there should not be in man the power of extinguishing human life, because the result was irreparable; because the injury could not be compensated which might be done, if the beings were not infallible who inflicted the punishment; (and where should we find such?) and, because, while we thought we were vindicating the law of society, we might be committing the greatest outrage that could be perpetrated upon our fellow-creatures. The honorable and learned gentleman who spoke last, shuddered at the death even of a criminal; but what would have been his feelings if he had witnessed, as he had, the execution of the innocent!

EXECUTION OF TWO BROTHERS FOR ROBBERY.

One of the first events which struck him when he was rising into life, was seeing a gentleman who had forsaken society, and thrown himself into a mountain lodge, abandoning the intercourse of men, and wandering about like a troubled spirit, a willing outlaw, and an outcast from the social state. He inquired the cause, and learned that it originated in these circumstances:—Two men got into his bed-room at night, and robbed him, but did not treat him with any brutality. He prosecuted two brothers for the crime; and they, being unprepared with any defence, from a consciousness of their innocence, were convicted and executed. Not a fortnight they had been laid in the grave, in the presence of their

father, and amidst the tears of their broken-hearted mother, the gentleman discovered his total mistake!

Mr. O'Connell said he would mention another instance, of which he had a personal knowledge:

EXECUTION OF THREE BROTHERS FOR MURDER.

He defended three brothers who were indicted for murder; and the judge having a leaning, as was not unusual in such cases, to the side of the crown prosecution, almost compelled the jury to convict. He sat at his window as the men passed by, after receiving sentence. A military guard was placed over them, and it was positively forbidden that any one should have any intercourse with them. He saw their mother, strong in her affections, break through the guard, which was sufficient to resist any male force—he saw her clasp her eldest son, who was but twenty-two years of age—he saw her cling to her second, who was but twenty—and he saw her faint as she clasped the neck of her youngest boy, who was but eighteen.

Instead of giving our views, we prefer to give the reflections of O'Connell himself. He asked 'What compensation could be given for such agony, and for such a sacrifice of human life as that?' After citing another case, of one who was saved from an execution by his efforts, he proceeds:—

'He mentioned these facts to show with what extreme caution any one should do that which was irrevocable. When we recollected that, in criminal cases, a prisoner was almost shut out from making any defence; and that, in cases of circumstantial evidence, men were convicted, not upon facts, but upon reasonings and deductions;—when we recollected that the criminal law permitted the counsel for the crown to aggravate the impression against the prisoner, and

prohibited his counsel from opening his mouth in his defence,—it might be said, without much exaggeration, that such a code was written in letters of blood. Was this England, the first country in the world for the love of liberty, and the encouragement of all the arts which adorn civilization and morality? Was this the country where, if a man had five pounds at stake, he might employ ten or twenty counsel to speak for him as long as they liked; but, when his life was in jeopardy, the law said, “The counsel against you shall speak in aggravation of the charge; but the lips of your counsel shall be sealed!” Up to the present moment, that horrible state of the law continued. He was firmly persuaded that if he had been entitled to speak on behalf of those three brothers—feeble as might be his advocacy, perhaps his heart would have aided his judgment, and given him an inspiration beyond the natural dulness of his disposition—he felt that he would have made it impossible for any jury to convict. If the punishment of these three brothers had not been incapable of being recalled, they might have been restored to their family; and the mother, who wept over their grave, might have been borne in decency to her tomb by those over whose premature death she mourned.*

We can add nothing to such eloquent, burning language. It is the true, the lion-hearted O’Connell who speaks. The voice comes across the Atlantic from the old world. It is a VOICE FROM IRELAND! And it comes not from one who speaks from mere theory, but from one who has felt, who has seen, the innocent

* See Herald of Peace for April, May and June. London: 1832.

suffer ; who even, while sitting at his window, actually saw the distracted mother as she broke through the guard to embrace her innocent children on their way to the scaffold !

What a thrilling scene ! This fact alone should make the whole civilized world pause and tremble, lest another innocent victim should be sacrificed upon the altar of this bloody law ! And how many have fallen ! Rev. Mr. Chapin says, 'it has been estimated that there are over one hundred !' How many more, is known only to him who is the Great Searcher of hearts. What a dark catalogue ! How many griefs and tears ! How many broken hearts ! How many distracted, ruined families ! And yet, how many lift up their voice, even now, in favor of blood ! And when we turn now to distracted, oppressed Ireland, in her ardent struggles for liberty, how solemn is her voice, as it comes to us from her 'great Agitator !' Even now, he is arraigned for conspiracy, in charges which have occupied seventy hours in reading ! And who can tell, who can predict, her fate ? The law of death still exists—the bloody axe is lifted up ! She may yet add another to the long list of those who have fallen victims to the punishment of death ! Heaven spare her from such a fate !



PART II.

SACRED SCRIPTURES.



ESSAY I.

C A I N.

Scriptures—Dominion not given to man over man—First murder in first family—Lamech—Abimelech—The Sacrifice—Murder of Abel—Address of Deity—Omniscience of Deity—Life inviolable—Objection—Anecdote of Biron—Immutable distinctions—Strength of the argument—Reflections—First and last murder.

Life is not to be taken, even for life. From beneath that rainbow arc, and from the ashes of martyred Abel, and from the stamped forehead of Cain, is proclaimed to the *magistrate* and the *criminal*, to the *murderer* in his bloody purpose, and the *judge* in his fearful decision, 'Thou shalt not kill!'

E. H. CHAPIN.

HAVING presented various facts and arguments from history and observation, we now approach the sacred volume; that volume which must decide all moral questions, and by which every system of Moral Philosophy is to be tried. Let us go then to its sacred pages, solemnly and reverently asking for light from Him who is the source of all moral and spiritual light; to Him who 'in the beginning created the heavens and the earth;' who said, 'Let us make man in our own image.'

Having finished our fair world and placed man 'to replenish and subdue it, He saw it was very good.' And 'the morning stars sang together, and all the sons of God shouted for joy.'

Such was the work of creation. God gave man 'dominion over the fish of the sea, and over the fowls of the air, and over the cattle, and over all the earth,

and over every creeping thing that creepeth upon the earth.' But man has extended that dominion over his fellow-man, and marred the image of God. Instead of making the earth to bloom and bud, he has strewn its surface with dungeons and gibbets, and made it a vast charnel house! From the hour that Abel fell, to the present, man has imbrued his hands in the blood of his fellow-man.

Let us then turn back the page of history, and look into the first family that inhabited our fair world. What an interesting period! The first family! We need not go to the garden and witness their temptation and moral degradation, for our plan leads us to their subsequent history, as they walk forth, driven from Paradise, laden with guilt and sorrow. As we follow them in the mind's eye, how anxiously we desire that they may find rest and peace. But O! the mutability of all earthly things! For lo! a murder even by their first-born! A brother stricken down by the hand of a brother! What sorrow must have rent their hearts as they beheld the stiffened corpse of Abel! What a scene! The first murder in the first family! Scarcely had the plough turned a furrow, ere the earth drank in the blood of one of her sons! How dark the prospect of our race at that period!* How foul the

* Pursuing sacred history, we find Lamech, the father of Noah, was a murderer, and yet life was still held inviolable. And, in addition to this, he was the first bigamist; for we are told that Lamech said unto his wives, Adah and Zillah, 'Hear my voice, ye wives of Lamech, hearken unto my speech; for I have slain a man to my wounding, and a young man to my hurt: if Cain shall be avenged seven-fold, truly Lamech seventy-and-seven-fold.'

Pursuing history still farther, we find that the punishment of death originated with Abimelech, Gen. xxvi. 11. To secure Isaac and his wife after their pervarication, in which he had said, 'She is my sister,'

deed! How cruel the motive!—‘because his own works were evil, and his brother’s righteous.’ Here we see the foul demon, envy, not content with driving the first pair from Paradise, but even alluring their first-born from the path of virtue! How insinuating, how wily his arts! He even goes to the altar and sows there, with a sacrilegious hand, the seeds of discord!

How simple, how artless the account! ‘And in process of time it came to pass that Cain brought of the fruit of the ground an offering unto the Lord. And Abel, he also brought of the firstlings of his flock, and of the fat thereof. And the Lord had respect unto Abel and to his offering. But unto Cain and to his offering he had not respect. And Cain was very wroth, and his countenance fell.’ How early in the history of our race did passion triumph over reason! Behold the calmness of the Great Supreme, as he addresses the murderer! ‘And the Lord said unto Cain, why art thou wroth? and why is thy countenance fallen? If thou doest well, shalt thou not be accepted? and if thou doest not well, sin lieth at the door. And unto thee shall be his desire, and thou shalt rule over him.’ How calmly! how deliberately did Cain lift his murderous arm against his brother! ‘And Cain talked with Abel his brother, and it came to pass, when they were in the field, that Cain rose up against Abel his brother and slew him.’ Again Heaven speaks, and in the same calm tone! ‘And the Lord said unto Cain, where is Abel thy brother?’ What a question to a

Abimelech, after stating what might have been the consequences, ‘charged all his people, saying, he that toucheth this man or his wife, shall surely be put to death.’

brother! How direct! Now see how the demon leads on his miserable victim. Not content with murder, he drives him to falsehood and deception! There is a dreadful connection between the vices, and a beautiful connection between the virtues. He who ascends but a single step may reach the highest point in moral excellence. He who descends may reach the lowest depths of depravity! The history of man confirms this remark. It is a great moral truth of the utmost moment. How early was it revealed in the moral world! How little has it been heeded! It is inwoven in the very texture of things. And how inseparably connected are vice and wretchedness, and virtue and happiness!

Cain even imagines that he may deceive God himself! 'He said, I know not. Am I my brother's keeper?' How natural for him who has deceived himself, to think that he can deceive others, even the Great Searcher of hearts! But the same kind voice speaks. The Great Father does not forsake the murderer, though the murderer has forsaken him!

There is no solemn mockery of a trial. The sin is laid to his charge. 'What hast thou done? The voice of thy brother's blood crieth unto me from the ground.' There is indeed a voice in blood. The great, the solemn, the perpetual, the universal mandate has gone forth from the Great Legislator of the universe, '*Thou shalt not kill!*' Blood doth indeed cry from the ground. The murderer may bury his victim deep, but there is an eye that sees him; there is one who has said of the wicked, 'Though they dig into hell, thence shall mine hand take them; though they climb up to heaven, thence will I bring them down.' His eye is not dim cannot see, nor his ear heavy that he cannot

hear. And He who made man in his own image, will ever regard that image with tenderness and love. Life is sacred, inviolable; and he who destroys that life will be held accountable. And yet how slowly does man learn this great truth! Earth's fairest scenes have been reddened with blood; her mountains have been stained with human gore, her valleys have been rivers of blood, and her streams have been polluted, and she has been a vast slaughter-house.*

There was no trial, we have said; there were no witnesses, no judge with his ermine robe, no gathering of spectators, no prison, no fetters forged for the culprit. No. The Great Lawgiver himself presided, and pronounced the sentence. And what a lesson of calmness! What mingling of mercy and justice! And what a beautiful example for legislation in all ages!

We have seen the *deed*; we have learned the *motive*, and now the *sentence*! 'And now art thou cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand. When thou tillest the ground, it shall not henceforth yield unto thee her strength. A fugitive and a vagabond shalt thou be in the earth.' Life and liberty are both held sacred. The murderer might wander upon the earth. If he who had reddened its surface with a brother's blood should turn to it, it should not yield unto him its strength. And so it ever will be with the murderer. He may walk forth upon the earth, but briars and thorns will spring up in his path, and at every step his victim will ever be before him. No wonder Cain said,

* Dick has made an estimate in one of his works, that as many have been slain by human violence, as would fill eighteen worlds like our own!

‘My punishment is greater than I can bear. Behold! Thou hast driven me out this day from the face of the earth; and from thy face shall I be hid; and I shall be a vagabond in the earth; and it shall come to pass that every one that findeth me shall slay me.’ The poet has admirably presented the feelings of Cain in the following lines :

To the broad earth’s farthest range
 Me the Almighty’s curse has driven,
 My crime pursues me everywhere,
 And ‘Vengeance! Vengeance!’ cries to heaven.

Wo is me! my brother’s blood
 Echoes through the wild sea-shore;
 It murmurs in the hollow blast,
 It thunders in the torrent’s roar.—WHITEHOUSE.

What an instinct in man, that leads him to fear from society the same evil that he has inflicted upon another! And this is the punishment of the transgressor. It is one of the moral laws of God’s universe. It accords with the experience of every human being. An argument has been founded on this fact in our nature in favor of the Punishment of Death. But the Author of our being is not governed by our fears or our instinct. ‘My thoughts are not your thoughts, nor my ways your ways,’ saith Jehovah. Christianity is our light and our guide; and while the criminal may fear from society an infliction of the same evil that he has committed upon others, still it tells him that the age of retaliation is past. It is no longer ‘an eye for an eye.’ Still justice reigns, and terror and misery will follow in his steps. He will say in the morning, ‘would to God it were even! and at even, would to God it were morning! for the fear of his heart wherewith he

shall fear, and for the sight of his eyes which he shall see.'

It may be said, if we remove the gallows, there is no terror. Was there no terror to Cain? Has human nature altered? Is there nothing in a guilty conscience? Let us beware how we turn men from themselves. Let us show them there is a hell within; that in the very act of doing wrong, they kindle a fire in their own hearts, a worse hell than ever poets or divines imagined. And while we teach the sanctity of life, let us show that misery must follow in the path of wickedness. Any other doctrine is fraught with danger to the community. The author of *Lacon* has spoken very aptly on this subject. 'That the wicked prosper in the world, that they come into no misfortune like other folk, neither are they plagued like other men, is a doctrine that divines should not broach too frequently in the present day. For there are some so completely absorbed in present things, that they would subscribe to that blind and blasphemous wish of the marshal and duke of Biron, who, on hearing an ecclesiastic observe that those whom God hath forsaken and deserted as incorrigible, were permitted their full swing of worldly pleasures, the gratification of all their passions, and a long life of sensuality, affluence, and indulgence, immediately replied, "that he should be most happy to be so forsaken."' "

Amidst all the guilt and sufferings of the murderer, still both life and liberty were held sacred. 'And the Lord said unto him, Therefore, whosoever slayeth him, vengeance shall be taken on him seven-fold. And the Lord set a mark upon Cain, lest any finding him should kill him.' How remarkable! The first law on record against murder, is to preserve the life of the murderer

himself! If the gallows is so sanctifying, why was it not reared at that early period in the history of man?

It may be said there was no express law against crime; and 'where there is no law, there is no transgression.' There was no law written upon stone, but there was one written deep upon the human soul. There is, however, an eternal and immutable distinction between virtue and vice, truth and falsehood. It is an eternal law of nature that man shall not kill. It did not begin to be a law when first revealed, but it was so from the beginning. When the commands were given upon Mount Sinai, they were only a transcript from the great Original Mind, of what had always been right. Let all written laws against crime be abolished, and yet it would be wrong to commit them. We will give a single illustration. Were all human statutes, or even divine, respecting fraud, injustice, or cruelty, to be struck out of being, still it would be as wrong to steal or murder, as if we had ten thousand more laws enacted. Truth is truth, right is right, independent of all laws.*

But to return. Such is the account of the first murder, the *motive* by which it was prompted, the *manner* in which it took place, the *trial* of the parricide, the *sentence* and the *Judge*. And how many solemn thoughts rush into the mind! We behold the progenitors of our race driven from Paradise, laden with guilt

* The author could not be expected, in a work of this nature, to enter into a dissertation on the doctrine of Immutable Distinctions. He refers the reader to the writings of DUGALD STEWART and BROWN, and especially to the invaluable work of Dr. SAMUEL CLARKE, entitled, 'A discourse concerning the Being and Attributes of God, the obligations of Natural Religion, and the Truth and Certainty of the Christian Revelation,' vol. ii. p. 37, London, 1725.

and borne down with sorrow. We behold them as they clasp their first-born! Then a few short years, and what a scene meets their eyes! Their first-born a murderer! We follow them as they stand over the body of martyred Abel!—as they compose his cold limbs and lay them ‘into the first grave dug for mortality!’ And how many moral truths does this scene present to the reflecting mind! And were it our province, gladly would we present them. But we revert to the history to learn the fate of the murderer, and what an argument against the shedding of blood! Who can gainsay it? And here the great fact stands, that life is inviolable, that even the days of the murderer are too sacred to be shortened! And here it ever will stand as one of the planets in the firmament of revealed truth! It stands for the guidance of all legislators! It stands forever as a bow in God’s universe, as an oasis in a desert. And when the hand that pens these lines shall be motionless in the grave, and others shall plead for the sanctity of human life, here will be found that great truth stamped with the broad seal of Jehovah. We love to linger here and contemplate this bright truth, this truth on which rests the temporal happiness of a world! But we must close. Other scenes invite our attention. We have opened the volume of inspiration, and we must follow it as it leads us on to other times and other events. And we finish with a single reflection.

The first murder! How many thoughts are awakened by that expression! The first murder, and that a brother, and in the first family that trod our fair earth! How ardently does the philanthropist look forward to the last murder! To that quiet and beautiful period when the earth shall no longer drink

in the blood of her children ; when superstition and ignorance, pride and passion, bloodshed and misery, will yield before the dominion of the Prince of Peace ; when the hand of cultivation shall spread bloom and beauty through all the valleys, and up the sides of every hill and mountain, and over all the continents and islands of the earth, till at last the Prince of Peace will sit upon his throne, the grand pacificator and restorer of a world ! How glorious !

ESSAY II.

COVENANT WITH NOAH.

Importance of the argument—Cheever's view—Confounded with Mosaic code—Cain's sentence experimental—Reply—The deluge—The promise—Rainbow—Translation—Septuagint—Vulgate—Le Clerc—Calvin—Upham—A prediction—Cheever's ridicule—Sanctity of life—Chapin's view—Patriarchal age—Illustration from Jesus—The revelator—Debate in Windward Islands.

'We regard it as merely expressive of a great retributive fact in nature, and in the overruling Providence of God, that he, who designedly and wickedly takes human life, shall, assuredly, in some way or other, meet with severe punishment, and will probably come to a violent end.'—T. C. UPHAM; *Manual of Peace*, p. 219.

WE have now reached a very important part of our labor; a portion of Scripture on which the advocates for the punishment of death place great confidence. The Rev. Mr. Cheever calls it 'the citadel of the argument, commanding and sweeping the whole subject.'

'The hand,' he continues, 'that drew the rainbow over the sky, in sign "that storms prepare to part," wrote this statute in lines no more to be effaced till the destruction of all things, than the colors of the rainbow can be blotted from the sky, while lasts the constitution of this physical universe. And, as in every conflict of the elements that might fill men's souls with terror of another deluge, this bow of mercy, this vision of delight, should span the clouds with the glittering arch, so, in every storm of human passion, that rises to the violence of death, this statute, as a

bow of promise, is God's assurance to the world, against the anarchy of murder. There probably never was an instance of murder in the Christian world, in which men did not think of it; nor ever an instance in the heathen world, in which the voice of conscience did not echo its assurance. As it stands in the Scriptures, it is one of the planets in the firmament of revealed truth; to strike it out from its place, and from its authority for the guidance of human legislation, would be like striking the constellation of the Pleiades, or the bright North Star, from heaven. A great writer has said, with most profound wisdom, that it is only by celestial observations that terrestrial charts can be accurately constructed; and so, it is only by the divine light that comes down from these divine statutes, that human legislation can be perfected; it is only by comparison with these statutes, that the mistakes of human prejudice or ignorance can be detected and adjusted. Sure we are, that, on the ocean of human passion, neither states nor individuals can be safe, but by charts, mapped and marked beneath the light of these enactments. It is light, like that of the planets, has travelled unaltered and unabated across the storms and changes of thousands of years; and still it shines, and still will it shine to the end of the world; for as sure as we are that a God of mercy gave this comprehensive element of law to Noah, so sure we are that he will never suffer it to be blotted from human statute books by the presumptuous tampering of a single generation.*

Such is the boasting, extravagant manner in which

* The argument of REV. GEORGE B. CHEEVER, in reply to J. L. O'SULLIVAN, Esq., p. 39. New York: 1843.

this reverend divine speaks of the covenant of Noah. He even goes farther, and endeavors to show that it is inhuman to strike out the penalty of death. This is only a reiteration of the same argument that has always been employed by the advocates of sanguinary laws. But this will be more fully met in our review of the objections at the close of the work.

Let us take a general view of the use made of this covenant. We find that many writers confound it with the Mosaic code, which was not given till nearly a thousand years after. Strictly speaking, the passage on which we are now commenting was not a code. It was a law or prophecy connected with regulations of another kind. The advocates for the Punishment of Death often use it both as a command and prophecy. But the most singular reason for this covenant is that given by the Rev. Mr. Cheever, in the introduction of his reply to O'Sullivan. 'I have argued that in consequence of the divine lenity in the case of Cain, the crime of murder had become frightfully common, the earth being filled with violence. The assurance that his own life would not be taken, with which Lamech, whether a murderer or a homicide, comforted himself and his wives by the example of Cain's preservation, shows how men reasoned from that lenity; and that the consequence of it would be a great cheapness in the estimate of human life, a great freedom in the indulgence of violent passion, unrestrained by consequences, and a perfect carelessness and recklessness in bloodshed.' Indeed, then, the Deity must have been a poor legislator! What a mistake! How short-sighted! Not to see that, even in a period scarcely covering the life of a patriarch, in passing sentence upon Cain, the result would be 'a great cheapness in

the estimate of human life,' 'a perfect carelessness and recklessness in blood-shed!' And pray what certainty have we, on this ground, that, in future legislation, God may not make a similar mistake! And how are we to know but he has been mistaken in every age, and that even in sending Christianity from heaven, He may fail in making it effectual in the redemption of man! But we cannot pursue this author in such a strain of remark. The idea that God was thus trying, as it were, the experiment of dispensing with Capital Punishment, for the experimental instruction of the human race itself, certainly seems puerile and absurd in the extreme.

Let us look at the circumstances connected with this passage. Its history is solemn and unspeakably important. 'The earth was filled with violence.' 'All in whose nostrils was the breath of life, of all that was in the dry land died.' . . . 'Noah only remained alive, and they that were with him in the ark.' What a melancholy scene! What a wild waste of waters! How dark the prospect of our race at that period!

At last, 'the windows of heaven were stopped,' and the ark rested upon the mountains of Ararat. 'The dove was sent forth, and she comes, and lo! an olive leaf plucked off! So Noah knew that the waters were abated from off the earth.' 'And Noah went forth, and his sons, and his wife, and his sons' wives with him.' And, as they went, Heaven sent forth the gracious promise: 'While the earth remaineth, seed time and harvest, and cold and heat, and summer and winter, and day and night, shall not cease.' What a beautiful promise! How interesting the circumstances!

Now, as the last wave of the deluge swept over the

earth, and man was again to re-people its surface, God establishes his covenant with his chosen servant. 'And the fear of you, and the dread of you, shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hand are they delivered. Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things. But flesh with the life thereof, which is the blood thereof, shall ye not eat. And surely your blood of your lives will I require: at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man.*' Then was established the token of the covenant, 'the bow in the cloud.' And in no age has there been a cloud so dark that the great Father could not put his bow there! And, as ages have swept over the earth, as storms have beat upon it, man has ever been able, amid all his sorrows and trials, to feel, as he lifted his eyes toward heaven, 'that the waters should no more become a flood to destroy all flesh.' Such is the history of the covenant with Noah. Let us proceed to discover its true meaning. And if we can but show, by fair interpretation, that it does not sanction the law of the Punishment of Death, then its advocates must remain content; for here, Mr. Cheever says, is the citadel of the argument; 'all else is a mere *guerilla* warfare, if you cannot carry this entrenchment.' To give our remarks order and precision, we will present them under two different views.

* Gen. ix. 2—6.

I. The true rendering.

II. A prophetic warning.

I. The true rendering. Some commentators have given a different view from our common English translation. We might not have noticed this fact, were it not that they believed in the punishment of death. No one will doubt this remark in relation to Calvin; for the cruel death of Servetus evidently shows that he was both theoretically and practically in favor of such a form of punishment; and his history adds another to the long, dark catalogue of facts, showing the perverted use that may be made of the Punishment of Death. Both spiritual and political despots have ever found it a weapon ready prepared at their hands.

Mr. Rantoul, to whom we are greatly indebted for many valuable facts, says, 'that the Hebrew participle translated "whoso sheddeth," answers to our English word "shedding," and might, with quite as much or more propriety, be rendered "whatsoever sheddeth;" and the grammatical construction will be consulted by substituting "its" for "his." The clause will then read, "whatsoever sheddeth man's blood, by man shall its blood be shed."'* He then shows that this rendering makes it consistent with the context, which was to show the sanctity of human life. 'The fear and dread of man shall be upon every beast. The beasts may be eaten for food, but not with the sacred principle of life, the blood; for life is sacred, and if your blood of your lives shall in any case be shed, I will require a strict account of it, whether it be shed by beast or man. I will myself call to a strict account the *man* who shall shed the

* See Report made to the Massachusetts Legislature, 1836, p. 79.

blood of his brother, but if a *beast* has shed man's blood, by man let that beast be slain, because that beast has profanely marred the image of God in the human frame.' Mr. O'Sullivan says the literal rendering is, 'Shedding blood of man in man his (or its) blood will be shed.' He then endeavors to show the difficulties attending the common translation. He, however, does not rest his argument upon the mere rendering of the passage. 'That of the Septuagint would alone suffice, as it is not to be supposed that the seventy-two learned Jews of Alexandria, two hundred and eighty-seven years before Christ, would have misunderstood the Hebrew expression; and their rendering into Greek is: *Ὁ ἑχίαν αἷμα ἀνθρώπου, ἀπὲρ τοῦ αἵματος αὐτοῦ ἐχυθήσεται.* "Whoso sheddeth a man's blood, for his blood (i. e. the blood of the slain) will have his own shed." So also the Samaritan version, as rendered into Latin, has it, "*pro homine sanguis ejus effundetur*"—"for the man his blood will be shed." While the Latin Vulgate renders it simply: "*Quicumque effudit humanum sanguinem fundetur sanguis illius*,"—"Whoso sheddeth human blood, his blood will be shed,"—omitting our "by man" altogether.' Calvin says, 'to render it "by man," is a "forced" construction.' And he interprets it rather in a denunciatory than in a mere legislative sense. Le Clerc, who is certainly high authority, in a note on the word, says, 'that while some translate it "*per hominem*," i. e. *through* or *by* man, and that the preposition *beth* is constantly to be found in the sense of *per*, yet, "in accordance with the most frequent usage of the Hebrew language, it would have been said *BJAD ADAM, by the hand of man*. Yet it is always read *BAADAM, or in man, or among men*." "As *in man* (con-

tinues Le Clerc) would scarcely make any sense, we are led to adopt the other signification, *among men*; whence arises a plain proposition, which is the same as that of the words immediately preceding, but more clearly expressed. God has said that *he will require* the life of the man slain from the slayer, among men or among beasts; he here more fully sets forth the same truth when he says that the blood of the slayer will be shed. A similar expression is used in Ecclesiastes viii. 9, *Dominates est homo inter homines in malum sulum*. It also often occurs in the books of Moses, BAADAM OUBABHEMA, *among men and beasts*, as in Exodus xiii. 2. . . . Nor are these words to be understood otherwise than *ως επι το πολυ*, (as generally to happen,) as such expressions constantly occur among the sacred and profane writers. Homicides generally suffer a retributive punishment for their crime, whether they fall into the hands of the law, or, by the just providence of God, perish by some violent death."* Such authority ought to settle forever the true rendering. Professor Upham, one of the first Hebrew scholars in this country, says, 'that the passage may read, "who-so sheddeth man's blood, by man WILL his blood be shed."' He adds that the expressions 'are obviously not to be understood as a command, authorizing and requiring every one, by his own act, and in his own person, to put to death any and every other individual who has been guilty of murder. Such an interpretation would fill the world with violence and confusion.'

* See an able article, entitled 'The Gallows and the Gospel,' in the *Democratic Review* for March, 1843. Also the number for April, 1843.

II. The passage may be considered as a denunciation or prediction. We know that the advocates of the law of death will look on such a view with suspicion, or as an evasion of its true meaning. But we leave them in the hands of commentators of their own school. When men like Le Clerc, Michaelis,* Calvin, and Upham favor such a rendering, it is certainly entitled to respect. The Rev. Mr. Cheever actually turns such a view into ridicule. 'Suppose,' he says, 'a malicious neighbor, in that early age, to have set a trained bloodhound on a man whose life he was seeking; and the obedient animal, true to his own nature, and an admirable instrument of murder for his master, takes the life-blood of his victim. Must the man be arraigned and executed on the charge of murder? By no means, say the humane expositors of this law of God; that would be to add murder to murder. Let the man escape, but the dog must be hung; the ferocious brute, that knew no better than instinctively to do what his master bade him, and so to slay a man made in the image of God, deserves to die. Let the court proceed to condemn the blood-thirsty quadruped; and, to show the sacredness of human life, and protect society from the incursions of wild beasts, let the creature be solemnly executed; and let it be done in the sight of all the other beasts and bloodhounds you can summon to the spectacle; for the statute is, "*Whatsoever* sheddeth man's blood, by man shall *that beast's* blood be shed!"' We shall see that all such remarks are not only ridiculous, but even blasphemous. We sincerely believe that our views are confirmed by history, both sacred and profane. The pas-

* Commentaries on the Laws of Moses, ch. iv., § 2, art. 274.

sage expresses a great retributive fact revealed in the moral world, and in the Word of God. He who wickedly takes human life will meet with severe punishment, and come to a miserable end. It may be understood in the same general sense as that in the fifty-fifth Psalm: 'Bloody and deceitful men shall not live out half their days.' It is so arranged in the constitution of things, and in the providence of God, that bloody and deceitful men do not prosper, but always meet with disappointment and suffering. To human appearance, they may prosper, but, if we could look within, we should find they were as 'whited sepulchres, full of dead men's bones.' 'The way of the transgressor is hard.' And he who even attempts to strew that way with flowers and roses, does an unspeakable injury to society.

The very object of the passage was to strengthen and deepen, in the human soul, the great idea of the sacredness of life. Even if destroyed by a beast, its life would be the forfeit; not man, for that would destroy the very idea of the sanctity of life.* 'The provision conforms naturally with that dread and fear, with which beasts are to regard their appointed lord; it accords precisely with the main object of the law itself, that blood shall not be eaten, in order to

* The same sentiment will be found to be incorporated with the Mosaic Code. And the principle is found in connection with the laws of other nations. 'An individual accused of murder was allowed, by one of the Athenian laws, to banish himself from Attica, in the early stages of the process. If he returned, however, before a compromise was effected between his friends and those of the person slain, he might be put to death. Plutarch relates that Solon required a dog, which had bitten a man, to be delivered up to the vengeance of the law; and a statue, which, by falling, killed an Athenian, was punished as a murderer.'

cultivate a reverence for the principle of life; and we see the force of the reason for it, that man is made in the image of the Deity, which would not be very apparent, if it were understood to mean, that because murder was a marring of God's image, therefore, whenever that image had been once marred, it should be marred again.'

The whole passage breathes a sentence of condemnation against taking life, assigning a reason of the utmost weight: 'for in the image of God made He man.' As though the Deity would say, just as man was once more stepping forth to re-people the earth, My image is sacred; it is not to be marred, and I will throw around it every guard, that it may be preserved inviolable.* But, if the passage conveys the common notion, it would defeat itself. Certainly, it could not mean, that when the image was marred by the murderer, his image should also be marred; for this would indeed fill the earth again with violence. And where would such a principle end? For he who took

* The Rev. Mr. CHAPIN, in his Discourses on Capital Punishment, p. 17, well observes, that 'the term "*whatsoever*" would seem to direct the application of the mandate in the text to the beast, to something lower than man; and the blood of the beast, shedding man's blood, man might shed; but, says the context, "at the hand of every man's brother will I,"—not shall man, not shall a court of justice, but "will I require the life of man." The penalty here is not with man, but with God. This, then, I say, seems to be the idea of the text and contexts. The principle of life has a mysterious sanctity, even in the beast. But man has a high distinction from the brute. He has not only the principle of life in him, but he is made in the image of God. Man, then, is not to violate this principle of life in the beast, for even there it is sacred. But the beast violating it in man shall die by the hand of man; and man violating it in his brother, shall render an account to God; for in the case of man's murder, not only is the principle of life violated, but the image of God is desecrated.'

the life of the murderer must fall. Taking, then, the popular view, when the first murder was committed, it would authorize a second to meet it; and, then, he who was the executioner must, in turn, have his blood shed; and so on, till the very last man stood upon the ruins of a world!

There is one consideration which ought to have great weight with those who advocate the penalty of death from the covenant of Noah. It seems, however, to have been entirely overlooked by them. We refer to the fact, that even in the patriarchal age, it was not understood as a command to take life. We have an account 'of the murder of Shechem and the people of his city, by Simeon and Levi, the sons of Jacob,* under circumstances of a most treacherous ferocity. Had the covenant with Noah been understood in that day as requiring the retribution of blood for blood, it is not to be supposed that the patriarch Jacob—combining the character of ruler with that of parent—would have left unexecuted the mandate so directly and imperatively given by the recent voice of God himself. His grief and anger for their crime are shown in Gen. xxxiv. 30. He nowhere intimates any feeling of remorse for the neglect of what would otherwise have been a high and solemn duty incumbent on him as a patriarch. While in his denunciation, on his death-bed, of the future retribution yet to overtake the seed of the guilty brothers, (Gen. xlix. 6, 7,) he makes no allusion to any such penalty, upon them or theirs, as that which must have been regarded as inevitable, had *he* understood the passage in question according to the modern interpretation of the

* See Genesis, ch. xxxiv.

advocates of Capital Punishment.' We forget that Moses himself was a murderer, even while this covenant was the only law.

In presenting a prophetic view of this passage, we feel that we are uttering a great and salutary truth, a truth so solemn and universal in its application, that we know not where to end our labors. Violence begets violence: 'a violent life will be likely to close with a violent death.' This truth is not felt nor understood. Illustrations might be drawn from history, both sacred and profane. When the Great Legislator of the universe announced this prophecy, He did but utter the same great truth that later Revelations were designed to confirm. 'He that doeth wrong shall receive for the wrong which he hath done.' As age after age rolled on; as empires rose and fell, this great law was continually developed. At last, the Great Teacher came from heaven, and established it forever. How many passages might be drawn from his weighty admonitions as illustrations! One only can be presented. Passing over the many thrilling events which marked the eventful life of the Son of God, let us view him in the trying hour that he passed in the garden of Gethsemane. Surrounded by his enemies, on the very eve of a cruel and ignominious death, and in sight of the very cross on which he was to suffer, he says to Peter, while in the very act of employing the sword, 'Put up again thy sword into his place; for all they that take the sword, shall perish with the sword.'* What a momentous declaration!—big with the fate of nations; for, what nation exists that has not 'taken the sword?' And, when applied practi-

* Matt. xxvi. 52.

cally to individuals, how many illustrations might we not find! The history of the world shows that those who resort to acts of cruelty and violence are exposed to similar acts in return.

If any consideration can add weight to the words of him 'who spake as never man spake,' it is the fact that, even in the closing up of Heaven's record, the same truth is again presented, preceded by the impressive address, 'If any man have an ear, let him hear.' 'He that leadeth into captivity, shall go into captivity; he that killeth by the sword, must be killed by the sword.' Here is the patience and the faith of the saints.*

Professor Upham, to whom we feel deeply indebted for many facts, has well expressed our views in his admirable work on Peace. 'The mark of Cain is stamped upon murderers, and they are lost and ruined men, even if the civil magistrate does not touch them. All nature frowns upon them; the very stones cry out; some perish by quarrels in the streets; some seek a refuge on the ocean and are drowned; some are put to death by their fellow-men from feelings of revenge, some are killed in war, some put themselves to death by violent means, some die of pure remorse and anguish of spirit; and, in one way or other, as sure as there is a God in heaven, who requires the blood they have shed at their hands, they all,

* Rev. xiii. 10. The word rendered here, will bear the interpretation *herein*, or *on this account in hac re*, as Rosenmuller has it. The passage would indicate submission to enemies, trust in God. It is a corroboration of that injunction, 'Avenge not yourselves, vengeance is mine; I will repay saith the Lord.'

sooner or later, come to a miserable end.’* This amiable author seems even to think that the executioner is not exempt from the general doom of the murderer. To him who has violated God’s law, the very earth on which he treads is a prison. He is, indeed, like Cain, a fugitive and a vagabond; and he is afraid that every one that findeth him will slay him. You need forge no chains for him; he has forged his own chains. You need write out no sentence; for everywhere he finds written, ‘Thou art weighed in the balance, and found wanting.’ He is his own

* Before me lies an account that illustrates the language of Professor UPHAM, in a very striking manner; ‘About sixty years since, an exciseman, who lived between Symington and Christ-church, on the Southern coast of England, was barbarously beaten to death in the presence of his wife and daughter, who were deterred from giving an alarm by two of the gang, who stood over them with a pistol at each of their heads. The sufferer (named Bursey) had, by his vigilance in his duty, rendered himself obnoxious to the smugglers on the coast, and a party of them obtained access to his house, by one of the smugglers calling Bursey up at midnight, with a false account of unlawful doings near by, and getting Bursey to open the door, that the informer might wait in the hall while Bursey dressed himself. On this, the gang rushed in on him and accomplished their object; and although the government offered a large reward, no tidings were obtained of the murderers for twenty-five years afterward. At about that time, the minister of Symington church was sent for by a man on his death-bed, and this man confessed that he was the thirtieth man of the gang who had murdered Bursey; that he stood watch at the garden wicket, between the house and the road, to give the alarm, if needful, but had no further active hand in the murder; that the *other twenty-nine had every one died a violent death*—some by fire, shipwreck, battle, frays with their companions in crime, execution for other crimes, or by some other means—so that, of the whole thirty, no one but himself had a chance to die in their beds or their homes. At the time of this confession, the writer was in the neighborhood of Symington, and had the facts from the minister who received the dying man’s confession.’

enemy. No human government, no outward circumstances, can injure him to the extent he has injured himself. He may fly from every human tribunal, but he cannot fly from—himself! With his own hands he kindles the fires of hell within his own soul! Once more, we repeat, and we would that we could reach the heart of every sovereign, and every individual, that 'Whoso sheddeth man's blood, by man shall his blood be shed.' Let society feel that this is not to be done by human tribunals, but that it is a great law inwoven in the very constitution of things. Let all our systems of Moral Philosophy be based on this great moral truth. Let it be deeply impressed upon the minds of our children. Let it be written upon the gateway of all our courts of justice. Let it guide all legislation. Let society everywhere be impressed with this moral law of heaven, that violence begets violence; that he who wantonly sports with life will himself meet with violence, disappointment and sorrow. When once the community are made to realize this truth, more good will be accomplished in a single hour than all the scaffolds, chains and gibbets have accomplished since time began! It is, indeed, 'one of the planets in the firmament of revealed truth; to strike it out from its place, and from its authority for the guidance of human legislation, would be like striking the constellation of the Pleiades, or the bright North Star, from heaven.' 'It is light, like that of the planets, has travelled unaltered and unabated across the storms and changes of thousands of years; and still it shines, and still will it shine to the end of the world.'

He who labors to establish this great moral law in the hearts of men, will benefit his race more than all

the conquerors of earth. What a lesson for the ambitious! How slowly the world learns this essential truth! How desirous men are to lower the standard of duty to their own narrow views and sordid feelings! Man must be brought up to the standard; it will never be brought down to man. Let the standard be raised; let the banner be unfurled that 'human life is sacred, that 'in the image of God made He man.' Here is a great work to be done. And if he is useful who cultivates the soil, and makes it bloom and bud, how much more so is he who plants a moral truth in the human soul, a truth that will 'bring forth the fruits of righteousness,' one that will germinate and flourish when thrones and dominions shall have passed away, and when all the fading glories of earth shall be lost in the glory and light of eternity?

Subjoined is a very interesting account of a debate in reference to this very passage, in a formal parliament of the Windward Society Islands. It is taken from the Voyages and Travels of D. Tyerman and G. Bennet. We present it as a very singular document, and as showing the progress of religious truth, and the views the unsophisticated mind of the heathen takes of the Noahic covenant, on first becoming acquainted with the Bible. Surely, if these untutored savages thought it safe to dispense with the punishment of death, the civilized world need not be afraid.

It may be remarked that the question was death or exile for life to a desolate island, and the latter was adopted:

On the question being proposed, Hitoti, the principal chief of Papecto, stood up, and, bowing to the president and the persons

around him, said, 'No doubt this was a good law, but a thought has been growing in my heart for several days, and when you have heard my little speech, you will understand what it is. The laws of England, from which country we have received so much good of every kind, must not they be good? Now, my thought is, that as England does so, it may be well for us to do so. That is my thought.'

Perfect silence followed; and it may be observed here, that during the whole eight days' meeting of this parliament, there was not an angry word spoken by one against another, nor did any assume more knowledge than the rest. None controverted the opinion of a preceding speaker, or even remarked upon it without some respectful commendation of what appeared praiseworthy in it, while, for reasons which he modestly but manfully assigned, he deemed another sentiment better.

After looking round to see if one was up before him, Utami, the principal chief of Buanaauia, rose, and thus addressed the president: 'The chief of Papeeto has said well, that we have received a great many good things from the kind Christian people of England. Indeed, what have we not received from Beretane! (Britain.) Did they not send us (Azea) the Gospel? But does not Hitoti's speech go too far? If we take the laws of England for our guide, then must we not punish with death those who break into a house?—those who write a wrong name?—those who steal a sheep?—and will any man in Tahiti say that death should grow for these? No, no, this goes too far. So I think we should stop. The law, as it is written, I think, is good; perhaps I am wrong, but that is my thought.'

After a moment or two of stillness, Upuparu, a noble, intelligent and stately chief, stood forth. It was a pleasure to look upon his animated countenance and frank demeanor, without the smallest affectation either of superiority or condescension. He paid several graceful compliments to the former speakers, while, according to his thought, in some things each was right, and each was wrong. 'My brother Hitoti, who proposed that we should punish murder by death because England does so, was wrong, as has been shown by Utami. For they are not the laws of England which are to guide us, though they are good; the Bible is our perfect guide. Now, Mitti Fruter (the missionary Crook) was

preaching to us on (naming the day) from the Scripture, "He that sheddeth man's blood, by man shall his blood be shed," and he told us this was the reason of the law of England. My thought, therefore, is not with Utami, but with Hitoti, (though not because of the law of England, but because the Bible orders it,) that we ought to punish with death every one found guilty of murder.' There was a lively exchange of looks all through the assembly, as if each had been struck with the sentiments of the speaker, especially when he placed the ground of the punishment of death, not upon English precedent, but upon Scripture authority. Another chief followed, and, 'rising, seemed a pillar of state,' one whose aspect, and presence, and costume (richly native) made the spectators forget even him who had just sat down. His name was Tati; and on him all eyes were immediately and intensely fixed, while, with not less simplicity and deference to others than those who had preceded him, he spoke thus: 'Perhaps some of you may be surprised that I, who am the first chief here, and next to the royal family, should have held my peace so long. I wished to hear what my brethren would say, that I might gather what thoughts had grown in their breasts on this great question. I am glad I waited, because some thoughts are now growing in my breast which I did not bring with me. The chiefs who have spoken before me have spoken well. But is not the speech of Upuparu like that of his brother Hitoti, in this way? If we cannot follow the laws of England, in all things, as Hitoti's thoughts would perhaps lead us, because they go too far,—must we not stop short of Upuparu, because his thoughts go too far, likewise? The Bible, he says, is our perfect guide. It is. But what does that Scripture mean? "He that sheddeth man's blood, by man shall his blood to shed." Does not this go so far that we cannot follow it to the end, any more than we can follow the laws of England all the way? I am Tati; I am a judge; a man is convicted before me; he has shed blood; I order him to be put to death; I shed *his* blood; then who shall shed *mine*? Here, because I cannot go so far, I must stop. This cannot be the meaning of these words. But, perhaps, since many of the laws of the Old Testament were thrown down by the Lord Jesus Christ, and only some kept standing upright,—perhaps, I say, this is one of those which were thrown down. However, as I am ignorant,

some one else will show me that, in the New Testament, our Savior or his apostles have said the same thing concerning him that sheddeth man's blood, as is said in the Old Testament. Show me this in the New Testament, and then it must be our guide.'

Much cordial approbation was evident at the conclusion of Tati's speech, and its evangelical appeal seemed to remove some difficulty and doubt respecting the true scriptural authority applicable to the case.

Next rose Pati, a chief and judge of Eimeo, formerly a high priest of Oro, and the first who, at the hazard of his life, abjured idolatry. 'My breast,' he exclaimed, 'is full of thought and surprise and delight. When I look round at this *fare bure ra*, (house of God,) in which we are assembled, and consider who we are who take sweet counsel together here, it is to me all *mea huu e*, (a thing of amusement,) and *mea aa foaou te aau*, a thing that makes glad my heart.

'Tati has settled the question: for is it not the gospel that is our guide? I know many passages which forbid, but I know not one which commands, to kill. But then another thought is growing in my breast, and if you will hearken to my little speech, you shall know what it is. Laws to punish those that commit crime are good for us. But tell me why do Christians punish? Is it because we are angry, and have pleasure in giving pain? Is it because we love revenge, as we did when we were heathens? None of these: Christians do not love revenge; Christians must not be angry; they cannot have pleasure in causing pain—Christians do not, therefore, punish for these. Is it not that, by the suffering which is inflicted, we may prevent the criminal from repeating his crime, and frighten others from doing as he has done, to deserve the like? Well, then, does not everybody know it would be a greater punishment to banish forever from Tahiti, to a desolate island, than just in a moment to be put to death? and could the banished man commit murder again there? and would not others be more frightened by such a sentence than by one to take away his life? So my thought is that Tati is right, and the law had best remain as it is written.'

One of the *taata rii*, or little men, a commoner, a representative of a district, now presented himself, and was listened to with as

much attention as had been given to the lordly personages who preceded him. He said, 'As no one else stands up I will make my little speech, because several pleasant thoughts have been growing in my breast, and I wish you to hear them. Perhaps everything necessary has been said by the chiefs; yet, as we are not met to adopt this law or that law, because one great man or another recommends it, but, as we, the taata rii, just the same as chiefs, are to throw our thoughts together, that out of the whole heap the meeting may make those to stand upright which are best, whencesoever they come—this is my thought. All that Pati said was good; but he did not mention that one reason for punishing, (as a missionary told us, when he was reading the law to us, in private,) is to make the offender good again, if possible. Now if we kill a murderer, how can we make him better? But if he be sent to a desolate island, where he is all solitary, and compelled to think for himself, it may please God to make the bad things in his heart to die, and good things to grow there. But if we kill him, where will his soul go?'

ESSAY III.

MOSAIC CODE.

Popular appeals to the Mosaic Code—Imperfect system—Wrong views—Its divisions—The Avenger—Cities of refuge—Visit to the cell of Leavitt, the murderer—Number of capital offences—Sacredness of life—Error in civilized codes—Statute of Massachusetts—Jewish code abolished—Moses referred to a higher prophet—Sixth commandment—Reasons for Jewish code—Voice of God—Objections.

‘All other things, which depend upon the eternal and immutable laws and rights of nature, remaining inviolately the same under both covenants, and as unchanged as nature itself.’

SOUTH.

THE advocates of Capital Punishment have invariably appealed to the code of Moses. It has been to them a ‘city of refuge.’ It is worthy of remark that the opposers of every moral improvement have gone at once to the types and shadows of the old dispensation. The advocates for Slavery, the supporters of War, and the opposers of Temperance, have all sought rest amid its shadows and darkness; and whoever has even suggested that its essential features have passed away, has been deemed an innovator or a skeptic. This is unfair. We profess as high a veneration for this portion of the sacred volume as the strongest advocate of that form of punishment which it is the object of the present labor to prove to be contrary to humanity. That ancient code was designed for a particular age, and a peculiar condition of society. When the advo-

ates of blood are driven from every other covert, they seek rest in the ancient dispensation. Here is a last resort, amid the types and shadows of a system which, under other circumstances, they admit has forever passed away. Driven to desperation, they grasp the horns of the altar. But 'they fly from light into the sun; from heat into the devouring fire; and from the voice of God into the thickest of his thunders.' In every age, the spiritual and political despot has called upon Moses, till the general reader has finally supposed that his system was a vast, dreary waste, barren as the very wilderness through which he led Israel! The system contained many benevolent provisions.* It taught a moral purity that even the penal code of civilization does not always include.

It is not to be considered as a perfect system; for, strictly speaking, there is no system of moral truth in the Bible. Its writers knew nothing about system. Guided, as we believe they were, by a superior wisdom, they presented truth as it came, leaving future generations to such an arrangement as appeared best. Great injustice has been done to this part of the sacred record. On the one hand, it has been said that it must be received entire; on the other, that it has been wholly repealed.

The whole code may be divided into the *moral*, the *criminal*, and the *ceremonial*. The first, embracing the decalogue given upon the Mount. The second,

* . . . 'The stranger and the fatherless and the widow, which are within thy gates, shall come, and shall eat and be satisfied; that the Lord thy God may bless thee in all the work of thine hand which thou doest.'—Deut. xv. 29. The benevolence of the Mosaic Code extended even to beasts: Exod. xxiii. 5; Deut. xxv. 4; Exod. xx. 10; Lev. xxv. 7.

relating to the penal jurisprudence. The third, relating to the various ceremonies and rites connected with its religious institutions. Living amid the light and blessings of Christianity, it is difficult to conceive of the bearings of this code upon that state of society for which it was designed. The means for the repression of crime were unknown. Extirpation seemed easier than emendation.

In this ancient code, the punishment of death was not a cool, deliberate act of society. The executioner was the nearest of kin to the one who was slain.* He was very appropriately called 'The Avenger of Blood.' Cities of refuge were provided for the slayer. But his life could be taken if found before he reached these places of security. Even the altar was no

* We find the same law existing among the uncivilized nations generally. 'Of the Arabs, says D'Arvieux, ("Travels in Arabia Deserta," p. 145.) "there is no hatred among them but on account of blood, and that is irreconcilable. For example, if a man has killed another, the friendship between their families and all their posterity is broken. . . . If they happen to be in some common interest, or there is any match to propose, they very civilly answer, 'You know there is blood between us; it can never be done; *we have our honor to preserve.*' They never pardon till they are revenged." "Les Persans," says Chardin, ("Voyages en Perse," &c., Tome III., p. 417,) "et tous les autres Mahometans, se conforment là-dessus absolument à la loi Judaïque, remettant à la fin du procès, le meurtrier entre les mains des *plus proches parens du défunt.*" Father Lobo testifies to the same practice in Abyssinia ("Voyage to Abyssinia," &c., p. 57.) "If a man is unlawfully killed," says the Koran, (Sura xvii. verse 35,) "we give to his nearest relation the right of revenge." But the notion is by no means to be called Oriental.

"If I live to be a man,
My father's death revenged shall be,"

says the child of the Border Chief, in the "Lay of the last Minstrel;" and there is no rule more rigidly observed among our North American
ians.'

protection. A legal investigation then took place. If guilty, the 'avenger' stood ready to cut down his victim. If innocent, and even then he abandoned the asylum before the death of the high priest, his life was insecure.

But where are our cities of refuge? The murderer is hunted down like some wild beast; then thrown into a cold, damp, dungeon, perhaps with felons far more guilty, there to await, perchance, a whole year before his guilt or innocence is known.* Then, if guilty, he is brought out before the gaze of a thoughtless multitude, and cruelly put to death! But we cannot enlarge. We will present the code itself, or rather its various capital offences. It is remarkable that no writer with whom we have met has performed this labor. We feel that it will do more to settle the question of its adoption by any civilized community than all other considerations:

NUMBER OF CAPITAL OFFENCES IN THE MOSAIC CODE.

| | |
|---|----------------|
| Murder, | Exod. xxi. 12. |
| Kidnapping, | " " 16. |
| Eating leavened bread during the Passover, | " xii. 15. |
| Suffering an unruly ox to be at liberty, if he kill; the ox also to be stoned, | " xxi. 29. |

* LEAVITT, the murderer, was confined in the Plymouth jail, Mass., nearly a year before his trial. A philanthropist, so nearly related to the writer that propriety would forbid his name, visited him nine months after his confinement in a most wretched cell, with scarcely a table or chair, or even a decent bed. 'How many have been to see you?' said the visitor to the poor prisoner. 'No one has entered the cell but the keeper.' And yet we are living in a community who profess to be followers of him who said, 'I was in prison, and ye came unto me.'

| | |
|---|-----------------|
| Witchcraft, | Exod. xxii. 18. |
| Bestiality, the beast put to death, | “ xxii. 19 |
| Idolatry, | “ xxii. 20. |
| Oppression of Widow and Fatherless, | “ xxii. 23. |
| Compounding holy ointment, or putting it on any stranger, | “ xxx. 33. |
| Violation of the Sabbath, | “ xxxi. 14. |
| Smiting of father or mother, | “ xxi. 15. |
| Sodomy, | Lev. xx. 13. |
| Eating the flesh of the sacrifice of peace offer- ings with uncleanness, | “ vii. 20. |
| Eating the fat of offered beasts, | “ vii. 25. |
| Eating any manner of blood, | “ vii. 27. |
| Offering children to Moloch, | “ xx. 2. |
| Eating a sacrifice of peace-offering, | “ xix. 8. |
| Screening the idolater, | “ xx. 4. |
| Going after familiar spirits and wizards, | “ xx. 6. |
| Adultery, [both parties, if female married, and not a bond-maid,] | “ xx. 10. |
| Incest, [three kinds,] | “ xx. 11. |
| Cursing of parents, | “ xx. 9. |
| Unchastity in a priest's daughter, | “ xxi. 9. |
| Blasphemy, | “ xxiv. 16. |
| Stranger coming nigh the tabernacle, | Numb. i. 51. |
| Coming nigh the priest's office, | “ iii. 10. |
| Usurping the sacerdotal functions, | “ iv. 20. |
| Forbearing to keep passover, if not journeying, | “ ix. 13. |
| Presumption, or despising the word of the Lord, | “ xv. 30. |
| Uncleanness, or defiling the sanctuary of the Lord, | “ xix. 13. |
| False pretension to the character of a divine mes- senger, | Deut. xiii. 5. |
| Opposition to the decree of the highest judicial authority, | “ xvii. 13. |
| Unchastity before marriage, when charged by a husband, | “ xxii. 13. |

MODES OF PUNISHMENT FOR CAPITAL OFFENCES.

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|--------------------|-----------------|
| Sword, | Exod. xxii. 24. |
| Stoning, | Lev. xx. 2. |

POSTHUMOUS INSULTS.

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| Burning of the body, | Lev. xx. 14 ; Josh. vii. 15. |
| Hanging of the body, | Deut. xxi. 22. |
| Heaping of stones over the body or place of burial, | Josh. vii. 25. |

MODES INTRODUCED FROM OTHER NATIONS.

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|---------------------------|---------------|
| Decapitation, | 2 Sam. iv. 7. |
| Sawing asunder, | Heb. xi. 37. |
| Strangulation. | |
| Crucifixion.* | |

What a dark catalogue ! How minute in its delin-
 eation of offences ! Every avenue of passion seems to
 have been guarded by a severe penalty. We ask its
 advocates if they are willing to take it entire for a
 guide to morals ? Or will they contend that a part
 only is binding at the present day ? If so, what part ?
 Shall 'he that smiteth father or mother be put to
 death ?' Shall this penalty be inflicted on 'the man
 that gathers sticks upon the Sabbath day ?' Shall it
 be inflicted on him who 'stealeth a man and selleth
 him ?' Or on him 'who afflicts any widow or father-
 less child ?' Alas ! if we were tried by this standard,
 imperfect as it was, we should find we were weighed
 in the balance and found wanting !

There is one feature in this code that demands our
 particular attention. It is the sacredness attached to
 man. There was a mingling of mercy and judgment.
 We refer to that portion which says, 'He that stealeth
 a man, and selleth him, or if he be found in his hand,

* See Introduction to the Holy Scriptures. By T. H. HORNE. Vol.
 iii., Part II., ch. III., sect. iii. and iv. MICHAELIS'S Commentaries,
 vol. ii., pp. 365—367 ; vol. iv., pp. 1—312. JAHN'S Biblical Archae-
 ology, § 252, *et seq.* Academical Lectures on the Jewish Scriptures,
 vol. i. By JOHN G. PALFREY, D. D.

he shall surely be put to death.' It is a very singular fact, that while man-stealing, man-holding, or man-selling, was punished capitally, that highway robbery was punished by requiring restitution.* The great truth here presented is, that man was of more consequence than property. We might do well to learn a lesson from this singular feature. It will be found that the great error in nearly all civilized society is, that property is more carefully guarded than life.† 'In matters of *property*,' says a writer in the London Morning Herald, 'one court of appeal may be resorted to after another; but where *human life* is concerned, our system of criminal jurisprudence allows of *no appeal* whatever. It is true,' he adds, 'that the judge may stay the execution if he thinks there is sufficient ground; but it rests entirely within his own breast whether he will exercise that discretionary power or not.‡ This idea is very clearly presented by Mr.

* 'If a man shall steal an ox, or a sheep, and kill it, or sell it, he shall restore five oxen for an ox, and four sheep for a sheep. If a thief be found breaking up, and be smitten that he die, there shall no blood be shed for him. If the sun be risen upon him, there shall be blood shed for him; for he should make full restitution; if he have nothing, then he shall be sold for his theft.' Exod. xxii. 1—3. Of course, where man was stolen, there could be no restoring of four fold!

† Our code reminds us of an anecdote found in connection with the history of the game laws: 'There was a time, we are told, when, by the law of England, the killing of a man was permitted to be expiated by the payment of a fine, while the killing of a wild boar, by one not qualified to hunt, was punishable with death. It happened then, so the anecdote has come down to us, that a man, charged with killing a wild boar, and put on trial for his life, plead in his defence that he did it by mistake, for that he really thought the beast was only a man!'

‡ See O'CONNELL'S speech before the London Society for the Diffu-

Rantoul. 'It is somewhat remarkable that offences, *not against property*, but which endanger life more directly and imminently, as well as offences more heinous and cruel against the person, the liberty, the honor, and not the purse of the injured party, are guarded against by punishments slight in comparison. Who steals the purse steals trash, but if he steals it openly, and so armed as to prevent or repel resistance, he must die for it; while whoso stealeth a man and selleth him, though armed in the same manner, with the same intent to kill if resisted, is to be punished by fine not exceeding one thousand dollars, or imprisonment in the State Prison not more than ten years, or in the county jail not more than two years.* So that if the robber has taken from a man of wealth the smallest coin that passes from hand to hand, being driven by the pressure of extreme want, or in the insane fury of intoxication, the judge, with these extenuating circumstances before him, must pass sentence of death, for here nothing is left to his discretion; while, if the same robber, armed with the same weapons, with deliberate malice aforethought, too cruel to be satisfied with the murder of its victim, should seize the same man of wealth, bind him hand and foot, and cause him to be transported to the coast of Barbary, and there sold as a slave to the Moors, the judge would be left at his discretion, to inflict a nominal fine upon the offender, or to sentence him to the county jail for twenty-four hours, if he see fit.' The same author

sion of Information on the subject of Capital Punishment. He has there touched this point with a masterly hand. Page 120 of the present work.

* Revised Statutes of Massachusetts, Chap. 125, sect. 20.

gives an illustration in showing the difference between highway robbery and manslaughter. 'Suppose a desperate man, just ruined at a gaming table, meets one who enrages him by bitter reproaches, and then, provoked by an angry answer, strikes him. If, in his fury, he should seize this man, snatch from him his pocket-book, and fly, having about him a dagger which he does not use, but only threatens to draw; this is highway robbery, punishable with death. If he had drawn his dagger and stabbed him to the heart, this would have been only manslaughter, and the punishment made as light as the court see fit to make it. The law, therefore, counsels an angry man to wreak his revenge upon life and not upon property, which, in such cases, it holds more sacred.' Indeed, he even goes farther, and shows that the law has not only guarded the purse with more jealousy than life, but even that which is dearer than life; 'for, by chapter 125, section 19, of the Revised Statutes, an assault upon a woman with intent to violate her honor, which may be committed with intent to kill if resisted, or even if not resisted, is punished by imprisonment, at the discretion of the court, or by fine.'

There was a very severe moral purity in the Jewish law, which civilization would hardly dare or wish to imitate.*

* 'And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death.' Lev. xx. 10.

The following was the law of the old Plymouth Colony. We give it to show the views of our forefathers on the subject of Adultery: 'It is enacted by the Court and the Authoritie thereof, that whosoever shall commit Adultery shalbee severely punished by whipping two several times; viz., one whiles the Court is in being att which

Dim as the light was that guided Israel through the pathless desert, we find there was a great moral purity, and a peculiar sacredness attached to life. It was not to be stolen or taken away by violence, except by permission from its Great Author. And why this sanctity? Why, in that ancient code, were life and liberty more strictly guarded than the purse? Because, to steal a man and sell him, is one of the highest offences that can be committed against a fellow-man. It includes within itself every other outrage that human power can perpetrate. To employ the language of another, 'It is *the reduction of persons to things*; not robbing a man of privileges, but of *himself*; not loading with burdens, but making him a *beast of burden*; not *restraining* liberty, but subverting it; not curtailing rights, but abolishing them; not inflicting personal cruelty, but annihilating *personality*; not exacting involuntary labor, but sinking him into an *implement* of labor; not abridging human comforts, but abrogating human nature; not depriving an animal of immunities, but despoiling a rational being of attributes—uncreating a MAN, to make room for a *thing*!' What a fearful responsibility rests on those who not only deprive men of their rights, but who deprive man of himself,* and sell him to the

they are convicted of the fact, and the 2nd time as the Court shall order; and likewise to wear two Capitall letters, viz. A D., cut out in cloth and sowed on their upper most Garments on their arme or backe; and if att any time they shalbee taken without the said letters while they are in the Govment, soe worn, to be forthwith taken and publicly whipt.'—*Plymouth Colony Laws, published agreeably to a Resolve, April 5, 1836*, p. 113.

* The author finds other subjects constantly presenting their claims. He determined, from the outset, in this work, to confine himself to the

highest bidder! How little realized in this age of speculation! What is man to him who is engulfed in trade? A mere machine to increase his wealth. What usurpations of power do we see in what is called a high state of civilization! The law and the altar claim their victims. What excesses of passion! And what a weapon does the law of blood put into the hands of the political and the spiritual despot!

But the essential features of the Jewish code have passed away. The penal and the ceremonial part is no longer binding. It was, 'a schoolmaster,' teaching men, in an imperfect condition of society, the first rudiments of moral and religious truth; teaching them, through the medium of types and prophecies, to look to 'One who would tell them all things.' It was a system of preparation, to lead them on to a higher state of moral truth.*

subject of the Punishment of Death, and the Sacredness of Human Life. He found, however, on examination, the remarkable feature in the Jewish code, of the punishment of death of him who stole a human being, and restitution or the selling of him who took property. At some future day, the author may, if health be spared, enlarge more fully on other moral topics that agitate the community. At present, he feels that the poor, condemned prisoner has peculiar claims upon his sympathy. He trusts that, as he journeys on, visiting the cold, loathsome dungeon, he may carry words of consolation, and be governed by the mild and gentle spirit of Him who 'came to open the prison to them that are bound.'

* 'To say that no part of the Jewish law is binding upon Christians, is very far from leaving them at liberty to disregard all moral duties. For, in fact, the very definition of a *moral duty*, implies its *universal obligation*, independent of all *enactment*. The precepts respecting *sacrifices*, for instance, and other ceremonial observances, are all *positive ordinances*; meaning that the things in question become *duties because they were commanded*: the commandment to love one's neighbor as *one's self*, on the contrary, we call a moral precept, on the very ground

Whatever is immutably right, in that ancient dispensation, will stand forever; not because we find it there, but because truth, like its great Author, is imperishable. Whatever was based upon the peculiar situation of Israel, has passed away. Its rites and ceremonies are lost in the more perfect system of Christianity. They were addressed to the outward senses, and were designed to lead the mind to Him who is a spirit. Its priesthood has ceased with the more perfect priesthood of Jesus. In Him 'we behold,' says a beautiful writer, 'the Law and the Prophets standing at the foot of the cross, and doing homage. You behold Moses and Aaron bearing the ark of the covenant; David and Elijah presenting the oracle of testimony. You behold all the priests and sacrifices, all the rites and ordinances, all the types and symbols, assembled together to receive their confirmation.*' He who received the law upon the Mount bid the people look to a higher and more perfect dispensation. 'The Lord thy God will raise up unto thee a Prophet from the midst of thee, of thy brethren like unto me; unto him shall ye hearken.' When that Prophet came, he abolished the penal and ceremonial part of the old dispensation, and summed up the whole decalogue in two simple precepts: 'Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. . . . Thou shalt love

that it was a thing *commanded because it was right*. And it is evident that what was right or wrong in itself before the law existed, must remain such after it is abrogated.'—ARCHBISHOP WHATELY.

* For an extended comparison between the Levitical priesthood and that of Christ, see a work published and sold by the Author, entitled, 'Names and Titles of the Lord Jesus Christ,' p. 167. Fifteenth edition. Boston, 1843.

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their hearts, were so wholly given up to suspicion, violence, and discord, as to render the permission of the belligerent principle of an eye for an eye, tooth for a tooth, life for life, in some degree necessary under the circumstances actually existing. It was on account of their sin that he permitted them to put each other to death, in the same way as it was on account of their sin that he permitted them to practise polygamy, and to give the writing of divorcement. Or another scriptural illustration of the course of the divine proceeding in this matter may perhaps be equally to the purpose, to be found in the hundred and sixth Psalm. "They soon forgot his works; they waited not for his counsel; but lusted exceedingly in the wilderness, and tempted God in the desert. *And he gave them their request, but sent leanness into their soul.*"

Such were the reasons for the ancient code. The command, 'THOU SHALT NOT KILL,' is solemnly re-enacted by the Great Teacher in the later and more perfect revelation. It is there found without any suspension or modification. The voice of God is speaking through his 'beloved Son,' to the nations of the earth. It comes not in the whirlwind, nor in the fire; but in the gentle accents of love. He speaks as a father to his erring children, and says, 'THOU SHALT NOT KILL.' Amid the noise and confusion of battle, that Voice has been disregarded. How great the responsibility of him who turns a deaf ear! This Voice not only speaks in Revelation, but also from the depths of the human soul. That Voice speaks to every government and to every individual, teaching the great truth that life is sacred; that it is not to be

touched by the hand of man or angel without permission of Him who gave it existence.

We are aware that some may object to the views we have advanced. It will be said there was a condition of society in which the Deity himself permitted the penalty of death. Therefore it may be proper now, or, if not now, at some future day. Since the announcement of the Law, Heaven has given us a more perfect Revelation. And, in the very opening of that Revelation, the law of retaliation is forever abrogated. The law of love is the only law by which we are now to be governed. Ages may pass away before Christianity shall reign upon our earth. That it will eventually 'reconcile all things,' we have no more doubt than of the existence of the system itself. Mr. Rantoul has met this objection so admirably that we prefer to give an answer in his own words: 'But, because a peculiar people, under the most peculiar circumstances, by as express an interposition of Heaven, as that which directed Abraham to offer up Isaac, were commanded to punish certain crimes with death, shall we, a polished and humane people, whose moral sensibility is deeply wounded by the spectacle, under circumstances essentially opposite to theirs, without warrant, violate the great command, which says to the legislator as well as to the subject, thou shalt not kill? This is the command both of nature and revelation; it grows out of no local or temporary occasion, but is eternal and universal in the obligation it imposes. How, then, dare any man disobey it; and how is it an excuse for our disobedience, that the man we kill has broken this law before we break it, and that we have taken into our *own hands* to exercise upon him that vengeance which

the Almighty has declared belongs to himself, because He, in his inscrutable purposes, some thousands of years ago, specially authorized a particular people, in specified cases, to be the executors of his vengeance? We have no message from Heaven, as they had, exempting from this law the four cases which our statutes exempt.' It should ever be borne in mind that our circumstances are entirely different from that of Israel. We are not a wandering tribe, just out of Egypt, passing through a wilderness! Our manners, our customs, our religion, are all different. Indeed, it would require a long labor to point out the peculiarities of the two conditions of society to which we have alluded. Yet there are many who really contend that the code given to Israel in their wanderings three thousand years ago, would answer for the present condition of society! It is forgotten that they had just escaped from the house of bondage, where they had been held in the most abject slavery. We cannot now, perhaps, tell precisely what was that condition. One writer says, 'that it probably exceeded any of the present hordes of savages in the wilds of Africa or Tartary, in slavish ignorance, sordid vices, loathsome diseases, and brutal lusts!' It betrays, then, a gross ignorance, to contend that the code of this ancient people may be applied to the present condition of society, especially when we call to mind that Moses himself bid us look to a higher Prophet.

It will be said that the Deity violated his own law; that He said to Israel, '*Thou shalt not kill,*' and yet incorporated the life-taking principle in the very same code. The following, from one who has thought very

deeply on this subject, meets this objection in a very able manner: 'Without discussing the question, whether God could really suspend, or positively command, the violation of any of the moral precepts embodied in the decalogue, either for the purpose of benefitting or punishing any of the creatures whom he has made, we meet the objection by saying that, whatever may have been the excellences or defects of the Mosaic code or dispensation, it prophesied of a time when it would be superseded by a higher and holier covenant; and, having now vanished away, it is no longer to be put on an equality with the new one, or to be referred to as of binding authority. Whatever was morally good in it, or in accordance with the moral nature of man, is, of course, embodied in the new covenant, and carried to perfection. Now let the objector point out where, in the latter, permission is given to take away human life, in any case, or for any object whatever. To whom shall we go but to Christ? What were his teachings on the subject of violence, and in regard to the punishment of enemies? * What did he say about taking the sword? What about coming to save men's lives? What in regard to his ability to defend himself? How did he feel towards those who crucified him between two thieves? They who appeal to the old covenant are bound to give heed to the voice of the new. They who bid us think highly of Moses, must concede that far greater reverence is due to Christ. †

But let us turn from Moses, and from every other prophet, to Him who 'came from the bosom of the

* See Sermon on the Mount.

† See Hebrews iii. 1—7.

Father,' the Light of the world, the Physician who came to remove the moral maladies of the human soul; the Morning Star who came to usher in a day of quietness and repose; the Good Shepherd who is to bring home the last wanderer to the fold of God.

15*

ESSAY IV.

TEACHINGS OF CHRIST.

Sermon on the Mount—Law of retaliation—Present law—Story of an executioner—The adulteress—Law of Moses—Feelings to be entertained towards the criminal—Anecdote—Request to call fire from heaven—Peter's request—Forgiveness—Moses and Christ—Objection—Sentence of Christ—His precepts—Objection of Hudson—Reply—Duty of the church—Objection—New covenant—The crucifixion—Eulogium upon Howard—Prayer-meeting in a murderer's cell—Death of Christ.

For the Son of man is not come to destroy men's lives, but to save them.
JESUS CHRIST.

AFTER wandering among the types and shadows of the Mosaic dispensation, it is refreshing to come to that more excellent ministry; to him who is the Mediator of a better covenant. We feel as though we had crossed the desert, and were about entering Canaan. As we approach, we hear the song, not of Moses and his host, but of angels uttering, in strains unheard before, PEACE ON EARTH, GOOD WILL TO MEN. We place our feet on the plain of Bethlehem, beside the cradle of the great Christian Legislator, with an illuminated sky above us. Here are no gibbets, no ruthless desolations, but all is lovely and refreshing. We stand upon the Rock Christ Jesus, looking back to 'the first covenant,' with its 'ordinances of divine service, and a worldly sanctuary;' and forward to that 'new and living way, which he hath consecrated for us through the vail.' 'Let us draw near with a

true heart, in full assurance of faith, having our hearts sprinkled from an evil conscience, and our bodies washed with pure water.'

As the great Mediator enters upon his work, what a flood of light and consolation does he pour upon the soul! He looks back on Moses and all the prophets. He shows that they pointed to him as the true Messiah. He collects their scattered rays, like the light of ten thousand suns, into one focus! And while he speaks, the multitudes hang upon his lips, 'wondering at the gracious words that proceeded from his mouth.' He began by revealing God as a Father, and as a being requiring spiritual worship. And when God was thus brought before the mind, every idolatrous temple on earth shook to its very centre. It was like the sun appearing in the midst of storms and tempests, gilding and beautifying every object. A flood of light and joy poured upon the world. Man claimed kindred with the skies. His soul leaped for joy. He looked to Heaven, and, for the first time, he felt that he could say to the Creator of worlds, MY FATHER! What a kindling, mighty thought! A richer truth, God could not have conferred on man. Let us hear his first sermon: 'Blessed are the poor in spirit: for theirs is the kingdom of heaven. Blessed are the meek: for they shall inherit the earth. Blessed are the merciful: for they shall obtain mercy. Blessed are the peace-makers: for they shall be called the children of God. Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you.'* What a sermon! Like dew upon the tender plant; like broad rivers in a desert; like the bright

* Matt. v. 3, 5, 7, 9, 44.

morning star ushering in a day of righteousness and peace. The very wilderness budded; the desert rejoiced and blossomed as the rose. From that hour to the present, the blessed influences of this sermon have been felt by the wise and the good. It has been to the world 'like rain upon the mown grass, and as showers that water the earth.'*

Had Jesus been governed by human wisdom, he would have pronounced blessings upon the proud, the rich and the popular. His first labor was to abrogate forever the law of retaliation. 'It hath been said, thou shalt love thy neighbor and hate thine enemy, but I say unto you, love your enemies, bless them that curse you, do good to them that hate you.' But can we love another, and put him to death? How much love does the government feel when the unhappy culprit is forced from his cell to the place of execution? It is the spirit of retaliation. There is no feeling for the offender. One great object must, from necessity, be excluded; which is, the good of the unhappy culprit. Indeed, the great ends of punishment are entirely set aside. The community receive no reparation, nor would they if ten thousand lives were taken. The example, instead of being beneficial, brutalizes and hardens the heart.† The law is wholly subversive of any good, and entirely contrary to the spirit of Christianity. This we shall

* See Names and Titles of the Lord Jesus Christ: Boston. Published and sold by the Author. Fifteenth edition, pp. 297, 363.

† See page 65, where will be found one of the most lamentable proofs of this remark. The executioner himself actually, after strangling seven men, coolly sat down to smoke his cigar and quaff a bottle of wine, before he proceeded to cut off the heads of his victims, previous to the burning of their bodies!

prove both by the example and precepts of its great Founder.

A solitary case occurs in the eventful life of the Son of God, in which a capital offender was brought before him. 'And the Scribes and Pharisees brought unto him a woman taken in adultery.' The object was rather to ensnare him than to obtain a just decision. 'This they said tempting him, that they might have to accuse him.' 'He knew what was in man.' He penetrated into the very depths of the heart. In this instance, what a sublimity of action! What brevity in his language! What inexpressible tenderness! What a benignity of spirit! While he rebukes the severity of the law on the one hand, he puts her accusers to flight on the other. What a rebuke to self-righteousness! 'He that is without sin among you, let him first cast a stone at her.' Then leaving the rebuke to find its way to their hearts, he stooped down and wrote on the ground. 'And they which heard it, being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last: and Jesus was left alone, and the woman standing in the midst. When Jesus had lifted up himself, and saw none but the woman, he said unto her, Woman, where are those thine accusers? hath no man condemned thee? She said, No man, Lord. And Jesus said unto her, Neither do I condemn thee: go, and sin no more.'* How admirably did

* John viii. 3—11. It adds much to the interest of this narrative, if we remember that the law of Moses ordained that the witnesses should throw the first stone, Deut. xvii. 7. It might add to the purity of our courts if we were guided by Moses in this respect. How slow should we be to condemn to death, if we had to chain the culprit, erect the gibbet, and place the halter and the cap!

Jesus turn the thoughts of these accusers inward! Would it not be well, when we look upon the miserable culprit, to turn our thoughts in upon our own hearts? A certain divine used to exclaim, when he saw a criminal carried to execution, 'There goes my wicked self.' And when the advocates for blood come forward in their zeal, would it not be well to pause, and remember the words of Jesus? 'He that is without sin among you, let him cast the first stone.' Let those who cry for blood, erect the gibbet and place the halter! How many would then be executed?

Let us consider the criminal as a man and a brother. A writer very feelingly remarks, that when we see one on his way to the gallows, we should say, 'There goes my father, my brother, or my son.'* How many executions would take place if the whole community possessed such a feeling? 'Go ye and learn what that meaneth,' said the Great Teacher; 'I will have mercy, and not sacrifice. I am not come to call the righteous, but sinners, to repentance.'† 'Thou shalt love thy neighbor as thyself.'

* A most beautiful incident occurs to the writer, which admirably exemplifies this sentiment. A long acquaintance with the individual renders it dear to him. It was a venerable old lady of Brewster, Mass. In passing through the street, she saw a poor bloated drunkard lying in the gutter. She went to him, and offered her aid, which he gladly accepted. An individual, passing at the moment, expressed his surprise that a lady should, in his estimation, so far demean herself. He asked her the reason. She replied, 'It is *my* brother!' 'Indeed!' he exclaimed. She quickly added, to his great surprise, 'and *your* brother, too!' How Christ-like! How nearly resembling the language of the Parable of the Prodigal Son! Instead of admitting the expression of the elder, 'THIS THY SON,' it was, 'THIS THY BROTHER HAS COME HOME!'

† *Matt. ix. 13.*

A very striking instance, illustrative of the spirit of Jesus, occurred on his way to Galilee. His road lay through Samaria, but the villagers 'did not receive him because his face was as though he would go to Jerusalem. And when his disciples, James and John, saw this, they said, Lord, wilt thou that we command fire to come down from heaven and consume them, even as Elias did?' What a request! And how would it have tarnished the character of Jesus had he given such permission! It was the very spirit of revenge. How pointedly did he reprove them! And that reproof contains the very spirit of that reform for which we are laboring. 'Ye know not what manner of spirit ye are of. For the Son of man is not come to destroy men's lives, but to save them.' Had the nations of the earth been governed by this principle, all violence would have ceased; every prison door would have been thrown open, and every criminal would have been reformed. The very wilderness would have smiled, and the desert rejoiced and blossomed as the rose. 'Instead of the thorn, would have come up the fir-tree, and instead of the brier, the myrtle-tree.' But, blessed be God, the time will come when 'violence shall no more be heard in thy land, wasting nor destruction within thy borders; but thou shalt call thy walls Salvation, and thy gates Praise.' 'Thy people also shall be all righteous.'

Look at another striking instance in the eventful life of the Son of God.* 'Then came Peter to him

* Matt. xviii. 21, 22. It was a maxim among the Jews, never to forgive more than thrice. We see that Peter had begun to outgrow the maxims of his age. But the idea of forgiving to the extent of the direction of his Master, had never entered his heart, nor that of scarcely any one since his day. And, as to human governments,

and said, Lord, how oft shall my brother sin against me, and I forgive him? till seven times? Jesus saith unto him, I say not unto thee, Until seven times; but Until seventy times seven.'

No one, who has glanced over the New Testament, but must have seen the totally different spirit of the new and the old law. Moses addressed the *injurer*, Christ the *injured*. Moses says to the one who has mutilated his neighbor, 'Eye for eye, tooth for tooth.' Christ says to the injured person, 'Ye have heard that it hath been said, eye for eye, tooth for tooth, but I say unto you not to requite* evil; but whosoever strikes you on the one cheek, offer to him also the other.' Moses taught retaliation. Christ taught submission. Moses made his enemies die for him. Christ died for his enemies. Moses regulated the outward actions. Jesus regulated the heart. Moses was mortal. Christ was divine. Moses was sinful. Christ was sinless. Moses was a teacher to a single nation. Jesus is the teacher of a world. Moses required sacrifice. Jesus required mercy. Moses violated his own laws. Christ exemplified his in every action. 'For if that which is done away was glorious, much more that which remaineth is glorious.'

Our laws are founded on Moses, not on Christ. 'Life for life' is written on every code in the Union.†

there is not one on the face of the earth that has been wholly governed by this or any other precept of Christ. If they had been, the law of death would long ere this have been abolished. For, can we forgive even once, and then put the capital offender to death?

* The word *avtironnai* means not merely *to resist*, but also *requite*; and, as it were, *to weigh out again what one has received*.

† Moses incorporated with his laws only *thirty-four* capital offences. Judge STROUD says, 'there are *seventy-one* crimes in the slave states for

Moses is our master, not Christ. We say to the criminal, 'life for life.' Christ says, 'Be of good cheer: thy sins are forgiven thee.' We 'are blinded; for until this day remaineth the same veil untaken away in the reading of the Old Testament; which veil is done away in Christ.' But 'the veil shall be taken away.' 'God will destroy the face of the covering cast over all people, and the veil that is spread over all nations.' Moses is still 'our schoolmaster.' We reject Christ, and put him to death. We will not hear his voice. We still linger around Sinai, preferring 'the ministration of death written and engraven in stones.' 'For ye are not come unto the mount that might be touched, and that burned with fire, nor unto blackness, and darkness, and tempest, but ye are come unto mount Sion, and unto the city of the living God, the heavenly Jerusalem, and to an innumerable company of angels; to the general assembly and church of the first-born, which are written in heaven, and to God the Judge of all, and to the spirits of just men made perfect, and to Jesus, the mediator of the new covenant, and to the blood of sprinkling, that speaketh better things than that of Abel.' Christ is shut out of our legislatures, our courts, our schools, our literature, our families. And if Christ were on the earth, he would say, 'Oh, ye of little faith.' We

which slaves are punished with death; for each of which the white man suffers only imprisonment. See Appendix I., code of Virginia. Murder is capital in every state except in Maryland, and there it is death or imprisonment for life. Treason is capital in the code of the Union, and probably in every state, either by statute or *common law*. The law was altered in Rhode Island before the late movement by Mr. ****. For a very curious fact, see page 94; also, Appendix I., note on Rhode Island.

have 'paid tithes of mint, and anise, and cummin, and have omitted the weightier matters of the law, judgment, mercy, and faith.' Oh! that the spirit of Jesus might reign in our midst! Well might he ask, 'When the Son of man cometh, shall he find faith on the earth?' If our 'eyes were lifted up,' we should not behold Moses nor Elias, but Christ. And if the Christian world were guided by the precepts of Jesus, every gibbet would be demolished, and every prison door thrown open. One great, all-pervading law would bind and govern the world; 'Thou shalt love thy neighbor as thyself.'

It is said that the Christian precepts were designed for individuals, not nations. This has always been urged against every attempt to make an application of Christianity to the life and conduct. The popular distinction between political and moral right, or between political expediency and Christian duty, is dangerous in the extreme. On this principle, political bargains are often made, and as often broken. By what authority do we limit the precepts of Christ? 'No prophecy of the scripture is of private interpretation.' If individuals are bound to act up to Christian rules, societies are subject to the same. If not, how many individuals must associate before the precepts of Jesus cease to be binding? Were Robinson Crusoe and his man Friday a nation? If not, when would they have begun to be a nation, provided successive ships had been cast away on his island, and successive savages enslaved? How populous must the island become before their members would sanction sin? The republic of San Marino has been considered a nation for many centuries. Its numbers are only three or four thousand. Our Indian tribes are more numerous.

Our government considers them nations when it makes treaties, but not when it *breaks* them! Is slavery no sin because sanctioned by the nation? The objection is absurd. We kindly ask, how many must be associated in a family or tribe before the precepts of Jesus cease to be binding?

Jesus, it is said, did not condemn the law against which we have been laboring. This objection has been often presented. And it is not only urged against the present reform, but against every reform that has been commenced since Jesus was on the earth. And, judging from the past, we suppose every reformer will have to encounter it at the very commencement. It is insincere. Men endeavor to seek shelter under the example of Christ, who care nothing about Christ. They would crucify the Son of God afresh, and open his bleeding wounds. And are such men willing to be governed by the example of Jesus? If they will go to him, then we beseech of them to follow in his steps. Hear, then, his commands: 'Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth. But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have thy cloak also.' These prohibit, decisively and positively, all acts of retaliation and violence. If carried out, not a single execution would ever again disgrace humanity. Such declarations, it is said, are not to be understood literally. Indeed! Is Christ divided? Did he not, when smitten on the one cheek, turn the other? Did he not even die on Calvary for his enemies? And is he not our pattern and guide? 'For even hereunto were ye called: because Christ

also suffered for us, leaving us an example, that ye should follow his steps : who did no sin, neither was guile found in his mouth ; who, when he was reviled, reviled not again ; when he suffered, he threatened not ; but committed himself to him that judgeth righteously.* Christ, then, is our great example. Looking to him, let us, if we can, erect the gibbet, chain our brother, fix the fatal noose, draw down the cap, and, amid his cries, cut him off from the earth !

But we will give the objection in the language of Rev. Charles Hudson, a member of the Senate of Massachusetts, in 1838, in his Report : ‘ When Christ was put to death, he expired between two malefactors, who were suffering capitally for their crimes. The penitent thief confessed that the punishment was just ; and the Saviour acquiesced in that opinion. Would Christ, in his last hours, have omitted this opportunity to condemn a penalty which was contrary to the ordinance of Heaven, and fraught with extreme cruelty ? Would the zealous advocate for the abolition of Capital Punishment, in these days, let such an opportunity pass without entering his protest against it ? We think not. Now, unless he claims to be more faithful than the Son of God, he must allow that the case before us furnishes an argument in favor of Capital Punishment.’ We think, in meeting objections of this nature, a great error has been committed. Too much reliance has been placed on mere phrases, and cold, unmeaning criticisms. Jesus himself never stopped by the way to controvert mere words. He began by laying the axe at the root of the tree. The law of retaliation lay in his way. He said, at once, ‘ Love your enemies, bless them that curse you.’

* 1 Peter ii. 21—23.

'It is apparent,' says a writer, 'throughout all Christ's teachings, that he was careful to confine himself to the great object of his mission, that of flinging broadcast over the earth, to make their eventual way to its remotest corners, the imperishable seeds of great principles, to the natural germination and growth of which, slow but certain, he committed all the practical social reformations which, in the ripeness of time, were to be their fruit. Wisely abstaining from attacking directly even those existing civil institutions most essentially at variance with those principles, he thus, by the words of power which he sent forth, planted at the very depths of their roots a blight which would not fail, earlier or later, to wither them to their topmost branches, and soon to bid them cumber the ground, and mar the fair face of the earth no more.' For ages, the church has been engaged in discussing mere words and trifling ceremonies, while humanity has been suffering, human rights disregarded, and prisons and gibbets strewn over the earth.* How little has been done! Eighteen centuries have rolled away. Yet, even now, when a poor, feeble voice, amid din, and strife, and blood, is raised for the poor, degraded criminal, it is drowned by the cries of morbid benevolence, sickly sympathy, infidelity!† But

* It is indeed lamentable to see the subjects which have, for ages, occupied the attention of the church, as of primary importance; such as whether baptism by immersion or by sprinkling was the true mode; whether Christ was really in the sacramental symbols, &c. &c.

† We admire the remarks of Rev. Mr. CHAPIN, of Charlestown, on this point. 'Morbid feeling! This has always been the cry. It was a morbid feeling in those who protested for the rights of individual conscience—it was a morbid feeling in our puritan fathers that excited them to resist the tyranny of the church. It was a morbid feel-

the still small voice will be heard. It may be long before it reaches the heart. But its mission will be effected. Truth is powerful, and must prevail. 'Who can calculate the orbit of a word?' He who sends out a great truth, will reap his reward. It may lie long buried in the earth, but it will eventually bring forth the fruits of righteousness. Like Jesus, the great Reformer, the advocate may be put to death, but he will have that peace which flows like a river. From his very death will flow a power that his life could never have imparted. 'The good man shall be satisfied from himself.' He looks not to outward circumstances, but to God, the faithful rewarder of suffering virtue.

Christianity is a great, a perfect system. It is a system of light and love. It comes from Him whose name is love, and who is the Moral Sun of the universe. It contains immutable and eternal truths. It appeals to man's moral nature. It is a system, benevolent in its origin, and omnipotent in power. Its design is to soften the human heart, to light up the world with joy, to bind up the broken heart, to break every yoke, to open the prison door; in short, to sever

ing that spoke in favor of Baptists and Quakers. It was a morbid feeling that induced the patriots of the revolution to rebel. It was a morbid feeling that softened down the harsh penalties of cutting out the heart, of transfixing the head on a pole, and of stretching on a rack, to hanging on a gibbet. It was a morbid feeling that changed the place of public execution from the public gaze to the jail-yard. And I expect that this morbid feeling will continue until the ermine of justice shall be no longer stained with blood; until men learn to be merciful even while they punish; until they learn that the true policy of society is not *severity* but *reformation*. If all this—and it is all of a kind—is morbid feeling, let it work on.'—*Three Discourses on Capital Punishment*, p. 71. Boston: 1843.

every chain, to purify and refine every soul, and to subdue all things to God.

In the New Covenant, we find re-enacted in the most solemn manner the great command, 'THOU SHALT NOT KILL.' As the old covenant was passing away, with its rites and observances, Jesus gathered up the Moral Law, stripped it of all tradition, and incorporated it with the gospel. And one of the commands of that Moral Law was, 'THOU SHALT NOT KILL.' True, there are other portions, of importance to the well-being of society. But our duty is to bring out this, in all its distinctness and awful solemnity. Other writers may take up the several parts of the decalogue, but, to us, this one seems all-important; for, we cannot expect human rights to be respected so long as human life is disregarded. The immutability of life lies at the foundation. We can safely build on no other principle. So long as the Punishment of Death is permitted, all other rights will be unsafe. We must begin here: 'THOU SHALT NOT KILL!' How solemn! It shines out everywhere in the Gospel. It does not come to us now amid the thunderings of Sinai. It drops gently from Him who 'came from the bosom of the Father;' from Him who is 'the Way, the Truth, and the Life.'

But the Hon. Senator, to whom we alluded, wonders why the Son of God did not speak against Capital Punishment on the cross. Indeed! Was that a time to point out the evils of a particular law; a law by which he himself was condemned to be crucified? Had he not already laid down principles that would eventually subvert every cruel law? Had he not, in his very first sermon, spoken directly against the

ESSAY V.

OBJECTIONS.

Innovation—Claims of antiquity—Christ—Cheever's view of Cain—Inhuman to abolish the law—Violence upon a maniac—The law a restraint upon the imprisoned—Conversation in a prison—Secess life—Expediency—Death of Christ—Experimenting—Anecdote—Incident among the Hottentots—All sympathy for the criminal—Example of Jesus—Adulteress—Suicide of Colt—Criminals beyond moral influences—Washingtonian movement.

'Pertness and ignorance may ask a question in three lines which it will cost learning and ingenuity thirty pages to answer. When this is done, the same question shall be triumphantly asked again the next year, as if nothing had ever been written upon the subject.'

BISHOP HORNE.

OBJECTIONS have always been made to every reform. Human progress is very slow. Long-established laws and customs, however absurd and barbarous, are not easily changed. And he who ventures beyond the prejudices of his age must endure persecution, perhaps even to martyrdom. We expect reproach; but that shall not turn us aside from laboring for humanity. Our efforts may have a very limited influence; but if we reach a single mind, dry up a single tear, modify even one unjust law, or soften a single heart, something will be gained.

There is an unfairness in the objections that are urged against this reform. It is common to present highly colored pictures of atrocious crimes. We are referred to the unnatural wretch who has assassinated

his father ; or the incarnate fiend who has set fire at midnight to the habitation of his enemy, and gloated over the destruction of a whole family. We are asked if such men should be allowed to enjoy the boon of life, of which they have pitilessly deprived the innocent and the virtuous.

But will the execution of the offender restore the murdered man to life? Will it again gather around him his ruined home, his massacred wife and children? The objection is based on vengeance. It was an admirable maxim of Bentham, 'Never do evil solely on the ground that it is deserved.' Unless some good purpose is gained, we have no right to inflict evil on the offender. We have shown that the existing law is subversive of all the ends of punishment.

Some persons seem to have a sort of morbid dread of the consequences that might ensue if Capital Punishment were abolished. They imagine that it is the only sure protection for their lives and their possessions. They seem to think the very foundations of society would be broken up. Such persons should remember that those countries have always been the most luxuriant in crime where blood has been spilled with the greatest freedom. We have shown the insecurity of property by the petitions of the bankers in England, who found the law so inefficacious that they prayed for its abolishment.* And such persons should remember that even after the experiment has been tried, society may go back and try again the efficacy of the scaffold. All we ask is the experiment. The friends of Capital Punishment have had their

* Part I., Essay III., p. 38.

turn for centuries. We beg of them to let us try ours at least for a few years.

I. The proposed reform is an innovation. This objection has been urged in every age. We freely admit that every innovation is not an improvement, though every improvement is an innovation. We have no respect for antiquity when it conflicts with humanity. If general usage be a test, no improvement will ever be made. We may plead antiquity for every execution for heresy or witchcraft. On this ground, the most cruel tortures, and even human sacrifices, may be justified. But do those who urge this objection respect antiquity when it conflicts with a favorite theory? Christianity itself is the greatest innovation the world has ever seen. Jesus himself was an innovator. He invaded long-established customs. He came to invade a whole dispensation of rites and ceremonies. He came to establish sentiments that will eventually overthrow every idolatrous temple. He said, 'I am come to send fire on the earth, and what will I, if it be already kindled?' This fire is still burning, and will continue till every species of violence is removed from the earth, till every passion is subdued, till 'the kingdoms of this world become the kingdoms of our Lord and his Christ.'

But if the objector still urges antiquity, we would go with him to the most antiquated case on record, to the very first murderer! Was there a gibbet erected for him? The very first law in existence, respecting murder, was to preserve the life of the murderer himself! Surely, antiquity is in our favor. We know that the Rev. Mr. Cheever urges that this was an experiment on the part of the Deity; that, in consequence of 'the divine lenity, in the case of Cain, the

crime of murder had become frightfully common, and the earth was filled with violence! '* Indeed! what a sad mistake! So this advocate for blood would correct the errors of the Great Legislator of the universe. Would it not be well first to enlighten our own legislators? We shall be content if we can correct but a single human error. This would amply repay the labors of a whole life. But we leave this divine to his work.

II. The advocates of the abolition of the law are not the friends of humanity. This has been urged against philanthropists in every age. Wilberforce, Clarkson and Sharp had this to encounter, in their efforts to abolish the slave trade. It has even been urged against the peace enterprise. War, it is said, has carried forward civilization and the arts, and nations have become improved by conquest. Without assuming too much, we simply ask the community to judge in this matter. Is there not as tender a sentiment of love and kindness among those who oppose the Punishment of Death as among its advocates? Let there be a day appointed for an execution; and who are the most angry if a reprieve is announced? Is it the most refined and the most amiable? Who go to the gallows? Who indulge in coarse and vulgar expressions? Instances have been where the multitude were so eager for blood that they have rushed into the cell, torn off the chains of the prisoner, and dragged him to the scaffold! An instance is given by Mr. Livingston, where the poor victim was a maniac! † And yet, when we plead for

* For a reply to this very profound argument, see p. 137.

† See Part I., Essay V., p. 61.

the repeal of the law, we are not the friends of humanity! 'Tell it not in Gath! Publish it not in the streets of Askelon!'

III. It is urged that Capital Punishment is necessary to restrain those who are imprisoned. What shall be done with those who are sentenced to imprisonment for life? Suppose the warden, or some other officer, is killed; then there is no heavier penalty, unless life can be taken. To meet this point, we present a conversation held in Thomaston prison, in Maine, with an officer. During a visit there, the writer was asked what could be done in such a case, alluding to the murder of Mr. Lincoln, warden of the Massachusetts State Prison, which had just occurred. 'Suppose,' we replied, 'that all the prisoners, (about two hundred and seventy,) had been engaged in that affray; would you hang the whole?' The officer hesitated. He never thought of that. We observed that the same principle that allowed the execution of one murderer, would admit that of ten, or five hundred, or any number that might be concerned. And where should we end? We may say this might never happen. True, but we should look out, in laying down principles, to see how far they may be carried. It will be seen that, in war, this very principle has been adopted. But, then, war justified any expedient. Let us be careful and not carry its principles into our codes.*

IV. Not wholly dissimilar to the last, is another objection. The execution of a criminal may save the lives of others. This is the doctrine of expediency—

* See a very interesting debate, held at the Windward Islands, on *the Punishment of Death*; page 153, of this work.

a doctrine which has sacrificed thousands, whose names were dear to literature, to patriotism, and the great cause of humanity. On this ground, even the Son of God was put to death. 'Ye know nothing at all,' said Caiaphas, 'nor consider that it is expedient for us that one man should die for the people, and that the whole nation perish not.' And so ONE must be put to death, in whom no fault was found. But the Romans did come, notwithstanding, and the whole nation perished.

This experimenting upon human nature is shocking. We kill one man in order to reform or confirm the virtue of another. It is an entire perversion of all moral reasoning. History, observation, and experience all demonstrate that crimes increase with the severity of laws. Public executions tend to promote cruelty and a disregard for life.

But if it be necessary to hang the murderer, why not hang the maniac? He is by far the most dangerous man. But our statute makes provision for the culprit if he become insane after sentence. The sheriff, then, is to wait till he comes to his senses.* If it be a female, then, if she be in a 'peculiar situation,' the sentence must be delayed!

But why hang at all? Why not simply have the *appearance*? Perhaps hanging in *effigy* might answer in some cases.†

* Our law reminds us of an incident. It appears that, on the morning of an execution, the physician reported that the prisoner was not well enough to be hung!

† At the Cape of Good Hope, the Dutch made use of a stratagem, which could only succeed among Hottentots. One of their officers having killed an individual of this inoffensive tribe, the whole nation took up the matter, and became furious and implacable. It was

'Suppose,' says Mr. Rantoul, 'by an arrangement with foreign nations, all the criminals condemned in all the courts of the old world could be brought within this Commonwealth, and executed in its different towns throughout the next year. Does any one believe that such is the moral effect of these exhibitions, that capital crimes would be less frequent after the expiration of that period than before? Is it not a more reasonable conclusion, that the value of human life would be so cheapened in the eyes of the spectators of such a lavish waste of it, that capital crimes, and particularly murder, would be fearfully multiplied, and almost in the ratio of the executions? If a thousand executions would produce this most miserable effect, one execution would produce much more than a thousandth part of it, since the first execution that a man witnesses gives a much severer shock to his moral sense, and inflicts a deeper and more lasting injury upon his character, than any ten or twenty scenes of the same sort that he may witness afterwards.'

V. It is frequently said that the friends of the proposed reform have too much sympathy for the criminal. But who is the criminal? Is he not a man and

necessary to make an example to pacify them. The delinquent was therefore brought before them, in irons, as a malefactor. He was tried with great form, and was condemned to swallow a goblet of ignited brandy. The man played his part; he feigned himself dead, and fell motionless. His friends covered him with a cloak, and bore him away. The Hottentots declared themselves satisfied. '*The worst we should have done with the man,*' said they, '*would have been to throw him into the fire, but the Dutch have done better; they have put the fire into the man.*'—WORKS OF JEREMY BENTHAM. Vol. i. p. 398. Edinburgh: 1843.

a brother? Is he beyond the pale of human sympathy and kindness? Have we not all, in some form, violated the law of God? And may we not be led to commit the same crime? Let us not be too hasty. We should remember the words of Jesus: 'He that is without sin among you, let him cast the first stone.' We believe that a murderer is as much an object of commiseration as a man afflicted with a loathsome bodily disorder, and that it is as much our duty to heal the moral maladies of the former, as the physical infirmities of the latter.

But we do not forget the victim of the assassin. We feel for his family. We mourn that crimes are committed. Gladly would we restore the loss. But would the taking of another life, or even a thousand, bring back the dead? Would it revive the joys of the desolate hearth? We say, then, spare the culprit. ~~He may yet be reformed, and perhaps even benefit the very family from whom he has taken his victim.*~~ It is because we feel for the loss of others, that we would stay the progress of crime. We have shown that public executions do not produc  this effect.

* We have often thought that better arrangements might be made in regard to criminals. Why could not, at least, a portion of their earnings go towards the support of the family of the murdered victim? The prisoner now works for the state, and a portion is devoted to his own security. He does, in fact, build his own cell, and forge his own chains. He does this not only *morally* but *literally*. Could he but know that he was doing something for the family whose peace he had invaded, would he not feel encouraged? On the contrary, if he was still regardless of those whose rights he had violated, would it not be a *punishment* to know he was laboring for their benefit? See p. 68, where a very interesting fact is given to show the care that one of the despotic governments of the old world have for the children of criminals.

But did not Jesus manifest a sympathy for the wrong-doer? Did he not say to the adulteress, 'Neither do I condemn thee. Go and sin no more?''* Had we his spirit, we should feel for the degraded and the forsaken. But we are revengeful; impatient for blood. A victim must bleed upon the altar!† An amiable author has finely presented this feeling on the day appointed for the execution of Colt, in New York. He, however, chose to be his own executioner! 'The hearts of men were filled with murder; they gloated over the thoughts of vengeance, and were rabid to witness a fellow-creature's agony. They complained loudly that he was not to be hung high enough for the crowd to see him. "What a pity!" exclaimed a woman who stood near me, gazing at the burning tower; "*they will have to give him two hours more to live!*" "Would you feel so if he were your son?" said I. Her countenance changed instantly. She had not before realized that every criminal was *somebody's* son.‡ And had he not the

* See p. 177, where this case is fully considered.

† It is not merely in regard to the Punishment of Death that cruelty manifests itself, but it is so in all our laws. In 1833, an estimate was made of the number confined for debt. It was found, by that oppressive system, seventy-five thousand were deprived of their liberty, in the United States. An instance occurred, where an individual was imprisoned for *two* or *three* cents, and an advocate of the law justified the arrest and incarceration of the body. See 'Essays on Imprisonment for Debt,' p. 14. By the Author of this work..

‡ Letters from New York. By Mrs. CHILD. Probably this expression was suggested to the fair authoress by an incident in New Haven. A horse was running violently through the street with a boy in a wagon. A lady rushed from her house to save him. Her daughter endeavored to check her, saying, 'Mother! it is not *your* son.' 'Yes,' she replied, 'but it is *somebody's* son!' When we see the poet

same right that the government had, to take his own life? Surely, if any one has the right to take life, it is the individual himself. And it is remarkable, that public executions, as Mr. Rantoul says, 'lead to a form of suicide scarcely known to the ancients.' Who ever read of the heroes of antiquity hanging themselves with a halter? But if ours is a weak humanity; if we are, as one nicknamed us, *humanity-mongers*, we have only to reply that, if this is a weak humanity, it is the weakness of Dr. JOHNSON, of Judge BLACKSTONE, of BECCARIA and MONTESQUIEU. It is the weakness of ERASMUS and Sir THOMAS MORE; of CHILLINGWORTH and GOLDSMITH; of FRANKLIN and LIVINGSTON; of RUSH and HOWARD; of FOX and PITT; of WILBERFORCE and ROMILLY, and even of him, above them all, who 'came not to destroy men's lives, but to save them.'

VI. But it is said that, with all our sympathy and kindness, some criminals are beyond the reach of all moral influences. Is this true? Have we exhausted all moral power? Are there not numberless instances that show the power of love upon the human soul?* We believe there is moral power enough in Christianity to remove every moral evil on earth. We must bring it to bear upon the human soul. Look at the labors of Mrs. Fry and Howard. Let us not despair. And all around us and about us is a great moral movement named after him who led our armies on to triumph and to victory. What a change has this moral revolution effected in the social habits of

criminal dragged through the street, did we but realize that it is *somebody's* son, what a sympathy would it awaken in the soul!

* See Appendix II., where several illustrations are given.

our country! But we shall refer to this more distinctly in our next chapter, on encouragements.

But who makes the objection that criminals are beyond our reach? Does it come from those who have engaged in the holy enterprise of bringing men back to virtue and holiness? No. The true philanthropist never despairs. He is obliged, sometimes, to adopt the language of the apostle, 'We are troubled on every side, yet not distressed; we are perplexed, but not in despair; persecuted, but not forsaken; cast down, but not destroyed.'

How little is done in comparison to what might be effected! Who visits our prisons? Who thinks of the poor convict? When his trial is ended, and he is consigned to the sufferings and degradation of a prison, all interest dies away in the cold inquiry, 'Is he safely lodged within the prison walls?' Then the multitude turn away, satisfied if bars, and bolts, and chains, guard the space between them and their *brother!* Thenceforth, he is viewed as a ruined man, an outcast from society, and from human compassion. Few go to his cold, damp cell, to speak a kind word. Few care whether he comes forth from his den a penitent, reformed man, or a malignant fiend, to scourge and destroy. And even if a feeble voice is raised, the cry is, Morbid feeling! Weak humanity! Sickly benevolence! 'Humanity-mongers!' But let the cry be raised. We are willing to be reproached. We will labor on, satisfied if we can but reach a single heart, and bring only one back to truth and virtue. And while we labor sincerely and heartily, we know we shall have the approbation of him who 'went about doing good,' and who said to the sinner, 'Be of

good cheer, thy sins are forgiven thee!' We close this chapter in the affecting words of the great moral poet of England :

‘ My ear is pained,
My soul is sick with every day’s report
Of wrong and outrage, with which this earth is filled.
There is no flesh in man’s obdurate heart ;
It does not feel for man.’

COWPER.

ESSAY VI.

ENCOURAGEMENTS.

Extent of the proposed reform—Punishment of Death sustains slavery—Experiment of the reform—English philanthropists—Mrs. Fry—Experiment among the heathen—Executions private—Suicide of Colt—Feelings towards the executioner—Spain—Scruples of jurors—Anecdotes—Progress of society—Imprisonment for debt—Inefficiency of Capital Punishment—Quakers—Penn—Washingtonianism—Incident of Channing—Christianity.

‘He that goeth forth and weepeth, bearing precious seed, shall doubtless come again with rejoicing, bringing his sheaves with him.’

BIBLE.

ENCOURAGEMENTS are necessary to carry forward every reform. And the philanthropist will always look around him for incitements to duty and action. And he has the right and the privilege to call to his aid every encouragement that society may present to animate and invigorate him in his efforts. The present reform is very extensive in its bearings upon the prosperity of society. It does not look to a single state or territory. It has no bounds. It knows nothing about territory. It knows nothing about sect or party. It does not aim solely at a single point; at the mere saving of a fellow-being from an ignominious death; though this is accomplishing much. It takes higher ground. Its great object is to show the sacredness of human life; that no hand of man or angel can lawfully touch it without permission of

Him who gave it existence. And, to inculcate this sacredness, the reform begins with abolishing the Punishment of Death. Other rights never will be regarded till human life is respected. We may form our associations; we may create new governments; we may form new parties; but never will any great work be accomplished till society receives and feels the doctrine of the Inviolability of Human Life. It is the doctrine of Capital Punishment that is the great support of the slave system, that infernal traffic in flesh and blood.* The Punishment of Death has been, in every age, the weapon ready formed, both for the political and the spiritual despot.

Here is a great work to be done, a work as honorable as it is great; 'a work,' to use the words of an excellent writer, 'which aims at the renovation of society, not by the inefficacious methods of the block, the gallows, and the guillotine; but by the nobler methods of moral culture; by purifying the fountain of good and evil in the youthful breast; by planting the seeds of knowledge and virtue, which shall afterwards spring up and incorporate the strength of their branches and the beauty of their flower and foliage in the mature life and action of the man.'

In closing our labor, therefore, we feel that we cannot do better than to present such encouragements as society would seem to warrant. But it must be remembered that we have got to work. and to work hard. Prejudices must be overcome; long-established customs must be changed. Even our very literature must be improved. The arts themselves have con-

* To support this remark, see the criminal codes of the slave-holding states; Appendix I.

tributed to strengthen crime. There are but few flowers to cull in this field; but little to please the taste. There is little poetry in blood, chains and scaffolds. We have a stern work to do in society; not merely to say to the state, spare that man; he is *my brother*; but society will demand that we bring him back a reformed man. Still, there are encouragements, though, as the Rev. Mr. Curtis, chaplain of the Massachusetts State Prison, remarks, 'I am aware that everything which relates to prisons, and their guilty inmates, is, to multitudes, revolting; in them such themes create no interest; they awaken no sympathy. On all this moral desert, they can see no verdant spot. Other wastes may be made to bud, and blossom, and bear fruit; but within the precincts of a prison-house, nothing is found to attract the eye of faith, to enkindle the dawns of hope, or call forth the aspirations of the spirit.' There are some, however, who see, amid all this darkness, some light; amid this moral waste, hearts that can be touched; and beings bearing the image of God. And we must work, though we bring back but a single soul to virtue and truth.

I. An encouragement is derived from the fact that the proposed reform is not a new experiment. Rome, Russia, Bombay, Belgium and Tuscany, have all set before the world the results of abolishing the Punishment of Death.* We need not repeat the facts in this place. They prove, beyond all doubt, that crimes lessen as laws become more humane.

In looking abroad, we derive much encouragement from the efforts of English philanthropists. For sev-

* See Part I., Essay VII.

eral years, there has been, in London, a 'Society for the Diffusion of Information on the subject of Capital Punishment.' This society has done an immense service to the cause of humanity. It has circulated many valuable works. And we have been much indebted to their labors for many valuable facts. And how much does the world owe to the labors of Mrs. Fry! Language is utterly inadequate to express our own feelings. Her whole history is a commentary upon the practical influences of Christianity.*

In looking abroad, we derive encouragements even from the movements of the heathen! A long debate was held in the Windward Society Islands, on this subject.† And even the Esquimaux are beyond the civilized world on this law.‡

II. Another ground of encouragement is, that humanity has triumphed so far as to change the place of execution from the public gaze to the jail-yard.§ This is, in fact, giving up almost the entire ground; for the argument always has been that we needed to

* Appendix II.

† See page 151.

‡ According to Sir John Ross, the crime of *murder* but rarely occurs among the Esquimaux. When it does, the murderer's punishment consists in being banished to perpetual solitude, or shunned by every individual of his tribe—insomuch, that even the sight of him is avoided by all who may inadvertently meet him. On being asked why his life is not taken in return, it was replied, 'that this would be to make themselves equally bad,—that the loss of his life would not restore the other—and that he who should commit such an act would be equally guilty.' Would it not be well to send there for a few missionaries to enlighten our Christian country? We hope, after this, no one will say that a civilized state of society cannot exist without the law of the Punishment of Death.

§ Appendix I. Notes on the laws of Maine, Massachusetts and New York.

have executions made public for an example. During the French revolution, when executions seemed too slow, Fouquier proposed to put the guillotine under cover, that the victims might be despatched with few spectators. 'Wilt thou *demoralize the guillotine?*' asked Callot, reproachfully. Now, the bloody work is to be done within the walls of the prison-yard; with a surgeon and physician—to see if the man is really murdered, we suppose—a spiritual comforter, a few citizens, and the relatives of the prisoner. A very interesting sight, indeed, for them! Mrs. Child has described this point admirably, in reference to the death of Colt, in New York. 'We were to have had an execution yesterday; but the wretched prisoner avoided it by suicide. The gallows had been erected for several hours, and, with a cool refinement of cruelty, was hoisted before the window of the condemned; the hangman was all ready to cut the cord; marshals paced back and forth, smoking and whistling; spectators were waiting impatiently to see whether he would "die game." Printed circulars had been handed abroad to summon the number of witnesses required by law: "You are respectfully invited to witness the execution of John C. Colt." I trust some of them are preserved for museums. Specimens should be kept, as relics of a barbarous age, for succeeding generations to wonder at. They might be hung up in a frame; and the portrait of a New Zealand chief, picking the bones of an enemy of his tribe, would be an appropriate pendant.' It is mortifying to think of the dense crowd that assembled at the place of execution. One man went from New Hampshire, on purpose to witness the entertainment. And even *women* were there, and we are told by Mrs. Child, 'that they

did not think themselves treated with becoming gallantry because tickets of admittance were denied to them!' And there 'the multitude stood, with open watches, and strained ears, to catch the sound, and the marshals smoked and whistled, and the hangman walked up and down, waiting for his prey, when, lo! word was brought that the criminal was found dead in his bed! He had asked one half hour alone to prepare for his departure; and at the end of that brief interval, he was found with a dagger thrust in his heart! The tidings were received with fierce mutterings of disappointed rage!' It was a remarkable coincidence that at the very hour of the death of the poor culprit, a fire broke out at the very top of the cupola of the prison. 'The wind was high, and the flames rushed upwards as if the angry spirits below had escaped on fiery wings.' But we turn away from such scenes, for, really, they do not look very encouraging!

III. Another ground of encouragement is, that society looks even upon the executioner with ^{abhorrence} ~~abhorrence~~. It was a singular remark of one of the most amiable men that we have ever met with, that, 'if human governments were all right, Jesus could hold any office connected with them!' We know not that it is wrong to bring in his sacred name in such a connection. A whole volume is contained in the remark. Could he be a hangman? But we leave the thought with the reader. The office of the hangman is a hateful one, '*detestabile carnificis ministerium.*' Men scorn to give him the right hand of fellowship; they flee from him as from a pestilence. It is not only so in a state of society like our own, but the same feeling is found abroad, and even in Spain,

where bull fields are tolerated. The following account is given by that great philanthropist, Mr. William Lloyd. He said "that no man, however low and despicable, would consent to perform the office of executioner; and whoever should dare to suggest such a thing to a decent man, would be likely to have his brains blown out. This feeling was so strong, and so universal, that the only way they could procure an executioner, was to offer a condemned criminal his own life, if he would consent to perform the vile and hateful office on another. Sometimes executions were postponed for months, because there was no condemned criminal to perform the office of hangman. A fee was allotted by law to the wretch who did perform it, but no one would run the risk of touching his polluted hand by giving it to him: therefore, the priest threw the purse as far as possible; the odious being ran to pick it up, and hastened to escape from the shuddering execrations of all who had known him as a hangman. Even the poor animal that carried the criminal and his coffin in a cart to the foot of the gallows, was an object of universal loathing. He was cropped and marked, that he might be known as the "hangman's donkey." No man, however great his needs, would use the beast, either for pleasure or labor; and the peasants were so averse to having him pollute their fields with his footsteps, that when he was seen approaching, the boys hastened to open the gates, and drive him off with hisses, sticks, and stones."*

IV. Another ground of encouragement is the in-

* Letters from New York. By L. MARIA CHILD, p. 207, *et seq.* We have read this work with much pleasure. It should be in the hands of every family.

creasing difficulty of obtaining jurors to convict in cases where the penalty is death. And the same scruples are found among witnesses. And even judges will compromise the dignity of their office and the demands of strict veracity, under the impulse of humanity. Numberless instances have occurred in England, where a prisoner was brought in guilty of stealing property only to the value of *thirty-nine* shillings, when it actually exceeded that amount, because death was the penalty for stealing *forty shillings*.* But we need not dwell on this point. Many persons, who have

* See page 36, where will be found a variety of illustrations of this remark. Facts on this point are abundant. The instances are so numerous that, in England, Sir WILLIAM GRANT said, 'there was a confederacy between judges, juries, counsel, prosecutors, witnesses and advisers of the crown, to prevent the execution of the criminal laws!' The following instances are worthy of attention; the first is exceedingly curious in its nature. It is from Lord ASHTOWN'S speech: 'A man swore, that going to bed in his own house, he wound up his watch, put it into his breeches pocket, then put his breeches under his pillow and went to sleep. In the night, a thief got privately into the house, stole the man's watch, and was detected in pawning it. The jury found the thief guilty of stealing, but not in the dwelling-house. "To make common sense of this verdict, the breeches must have conveyed themselves out of the house, in order to be robbed; and then taken themselves back to their former station, under the pillow, where the owner swore he found them." Besides the absurdity of this verdict, it contains a duplicity and evasion that disgraces a court, and effectually perjures the jury, who are sworn to give a verdict according to the evidence.' We give one more. 'A woman, named Macallaster, about twenty years ago, was indicted at the Old Bailey for stealing, in a dwelling-house, a ten pound bank note. The note was by itself in a box of no value. The fact was clearly proved; yet the jury found her guilty of stealing what was of the value only of thirty-nine shillings: thus, twelve men, executing a most sacred judicial office, declared before God, and as they hoped themselves for salvation, that a ten pound bank note was worth only thirty-nine shillings.' Sir WILLIAM BLACKSTONE denominates such cases as 'pious perjuries!'

been called to act as jurymen, well remember the painful feelings which they have experienced when obliged to decide in a case involving life and death. There is a deep feeling in the human heart, which revolts at the thought of taking life, even though it may be from one whose hands have been imbrued with human blood.*

V. Another ground of encouragement is, the gradual advancement of society towards greater purity in principle and practice. Science is extending her empire. Political institutions are becoming ameliorated. Morality and religion are advancing onward. There is a deeper, stronger feeling of sympathy for the degraded and the fallen.† The intellectual sun

* An instance lately occurred where, upon sentence of death being pronounced, the whole assembly rose, by a sudden impulse, while the judge addressed the throne of grace in solemn prayer.

† Perhaps the law of imprisonment for debt affords a very good criterion to judge of the progress of society, in respect to the amelioration of penal jurisprudence. It has been abolished in New Hampshire, Vermont, New York, and Tennessee; and in Connecticut, where, previous to 1831, a creditor could confine the debtor *till he rotted*, by paying his board. And, in Pennsylvania, a man was actually imprisoned thirty days for two cents! Seventy-five thousand freemen were then annually deprived of their liberty, in the United States, for debt alone! The writer well remembers the various objections that were made to his humble efforts, on this subject, in the year 1833. [See *Essays on Imprisonment for Debt*, by the Author.] But he has lived to see these objections gradually give way, and the cause of humanity triumphing. He hopes to see an equal progress made in the reform to which he is now giving his feeble efforts. He looks forward to a time when, not only the scaffold will be removed, but even our prisons will be changed into hospitals for the mind and schools of instruction. Perhaps the time may arrive when the reign of Alfred, king of England, will return again. It was brought about, not by severe laws, but by mildness. ‘Such was the general security throughout the country, towards the conclusion of his reign, that a child could

is visibly advancing towards its noon. Great efforts are making to diffuse the influence of religion. We live, indeed, in one of the most brilliant eras in human history. A flood of light has burst in upon us. We know there are many lamentations over the happiness or excellence of other times; but they have little foundation. We have great hopes of our race, and these hopes incite us to new efforts. We see, we feel—though we may, in the course of our labor, have spoken despondingly—that there is a perceptible advance in the community towards a higher standard of morality.

The inefficiency of Capital Punishments begins to be seen and felt. It has been tried for ages, and found wanting. Its progress has been marked with the most lamentable consequences. It has contributed to the impunity of the guilty. It has caused the destruction of the innocent.* It has, in every age, been a ready and subservient instrument in the hands of the oppressor.† And its advocates cannot even say that it

walk from one end to the other, with a purse of gold around its neck, in perfect security.' Many pleasing indications are already occurring to strengthen and animate him and others in the good work. A fine story is told of the quiet town of Nantucket, since the temperance reformation. The jail had become empty of all its inmates but one, and it was left in such miserable condition that even the key was lost, or, as another version of the story is, that there was but one prisoner left. Feeling rather lonesome, and not being very comfortably situated withal, we are told he sent word to the sheriff, 'that if he did not see to repairing the jail, he should leave pretty soon himself!'

* See Part I., Essay X., where a very thrilling speech from O'CONNELL may be found, in connection with an affecting instance of the execution of three innocent brothers!

† See Part I., Essay VIII., where may be found many illustrations of this remark.

has effected the object of intimidation. It begins to be seen, then, that a milder system may safely be adopted; at least, that we may be safe in trying the experiment.

Several influences have been at work to bring about a better condition of society. Among these influences, we should, in justice, place the principles of the Quakers. The community have seen a whole denomination living in peace and quietness, who have protested against the Punishment of Death. True, they have not accomplished so much as we could have wished. They have protested against the law as unchristian, but they have done little towards bringing into clear light, and sending forth with new power, the spirit to which the law must yield.* Cutting themselves off, by outward peculiarities, from the community; secluding themselves from ordinary intercourse, through fear of moral infection; living almost as a separate race, they have been little felt in society, they have done little to awaken that deep religious interest in man as man, that sensibility to his rights, that hatred of all wrong, that thirst for the elevation of every human being, in which Christian love finds its truest manifestation. In fact, every sect is too much imbued with the spirit of sects, and too exclusive to under-

* It is a singular fact, that even in the colony of WILLIAM PENN, murder was a capital offence, though he had great light, considering the age in which he lived. The following was the statute: 'Murder, wilful and premeditated, is the only crime for which the infliction of death is prescribed, and this is declared to be enacted in obedience to *the law of God*, as though there had not been any political necessity even for this punishment, apparent to the legislature.' BRADFORD, p. 16. See a very able work, entitled, 'Observations on Penal Jurisprudence and the Reformation of Criminals.' By WILLIAM ROSCOE, Esq., p. 84. London: 1819.

stand or spread the true spirit of human brotherhood. We have all been blind to the dignity and the value of human nature. We have not realized the worth of man. Oh! could we but see that all are the children of one common Father, what a love and sympathy would fill every heart!

VI. Another ground of encouragement may be derived from the Washingtonian movement. A little more than two years ago, six men commenced this great moral revolution. It is a startling illustration of the power of truth. It commenced at a time when the friends of temperance had almost despaired; when, indeed, the community had settled down upon the doctrine that there was no hope for the confirmed drunkard; that something, it is true, might be done to secure the rising generation. In the midst of this darkness, light came from heaven, and from a quarter where the world had never looked. And so it has been in every age. 'For the wisdom of this world is foolishness with God.' It is 'a cloud by day and a pillar of fire by night.' And, as ages roll on, the great principle, which this moral revolution has developed, will be extended till every prison is thrown open, and every criminal reformed. In this mighty work, we have not seen the literal dead arise, the cold, inanimate clay start into life, but we have seen more. We have seen the cold heart, that had remained untouched by all the influences of parental kindness, by all the pleadings of a tender wife, by all the cries of affectionate and starving children, moved and made to respond to the pleadings of the Washingtonian. And what a lesson does this movement teach the world! What room does it give for hope and

faith.* We cannot refrain from closing this part of our subject with the beautiful, touching language of the Rev. Mr. Peabody, of Portsmouth, in one of the best sermons we have seen upon this subject: 'Here is indeed a stone cut out of the mountain without hands. It is at the very moment, when the cause of temperance has sustained several serious checks and revulsions, and its friends and leaders feel themselves peculiarly lame in counsel, and embarrassed in effort; when, in some communities, all exertions are suspended, and, in others, conducted languidly and despondingly; when there is hardly a ray of promise, and the enemies of the cause are rejoicing over its decline. Least of all, is there hope among the wretched inebriates themselves. As well may we expect to see the paralytic take his own bed and walk, as to see these men standing erect among their fellows, and saying, "We too are men." And is it in their own strength that these men arise and stand? I solemnly believe not. The finger of God is here. It is a moral pentecost of his own sending, sent too at

* The far-reaching mind of Channing saw, before his death, that the same principle which was adopted in the temperance movement, might be applied to criminals. The following incident, which he related to the writer, on a visit to him, may not be uninteresting: 'Last evening,' said Dr. Channing, 'Capt. H*****, the president of the Washingtonian society, was here, relating to me the instances of the power of kindness upon the intemperate.' I asked him 'if the same principle could not be applied to other forms of crime.' He replied, 'that he thought the circumstances were very different; that should the robber and the murderer relate their experience, they would be prosecuted at once.' May we not live to see converted thieves and murderers bringing back the degraded and the forsaken of their own cast to truth and virtue?

the moment when the wisest counsel was baffled, and the most ardent philanthropy discouraged, that the glory may be his. I look back upon that period with a sort of religious awe. I believe that, while God is not far from any one of us, there are times and ways, in which his spirit moves over the great heart of a nation, and this is one of them.'

VII. But Christianity affords the greatest encouragement. Its predictions are glorious. It looks forward to a time when men of every tribe and language will unite in one holy and harmonious society; when 'violence shall no more be heard in the land;' when 'the knowledge of the Lord shall cover the earth;' when 'the wolf shall dwell with the lamb, and the leopard shall lie down with the kid, and the calf and the young lion and the fatling together, and a little child shall lead them.' Then 'judgment shall dwell in the wilderness, and righteousness in the fruitful field, and the work of righteousness shall be peace, and the effect of righteousness quietness and assurance forever; and all people shall dwell in peaceable habitations, and in sure dwellings, and in quiet resting places.'

APPENDIX.

No. I.

CAPITAL OFFENCES IN THE CODE OF THE UNION AND THE SEVERAL STATES.

WE have procured the number of capital offences in the code of the Union, and the several states. We were kindly permitted access to the State Library, and also to the Social Law Library. We feel that we ought to express our thanks to GEO. BEMIS, Esq., of this city. He has gone over the Criminal Law and prepared a view of the various criminal offences in the several states. His labors are invaluable, especially if we should wish to take a general view of crimes and punishments, as they exist in this country. But it should be remembered that, here, accuracy is unattainable, more especially in respect to the slave-holding states. There is a great want of system in their criminal code, and a great backwardness in regard to revision. Then the distinction between 'persons' and 'slaves' is very perplexing, especially to one unaccustomed to the intricacy of the law. But we have done what we could, and we should be grateful for any correction. Careful inquiry will be made, and should the present work pass through any number of editions, corrections will be made. But human laws are fleeting and changeable. Even while we write, changes are made; while we are penning these very remarks, some Legislature may be changing, or modifying essentially, some very important law. We believe the present view may lead to many reflections, and perhaps to important results.

CODE OF THE UNION.^a*Gordon's Digest, 1835.*

Treason.
 Murder.
 Arson ; dwelling-house or other buildings.
 Rape on the seas.
 Robbing mail, second time.
 Forgery ; as passing counterfeit certificates or other public security.
 Piracy ; one species, slave-trade.
 Confining slaves on shipboard, or offering them for sale.
 Robbery on the high seas.
 Setting fire to ship of war.
 Burning ships of private property for the purpose of defrauding underwriters.

CAPITAL OFFENCES IN ALL THE SEVERAL STATES.

MAINE.^b *Law of 1842.*

Treason.
 Murder.

^a The reader who is unaccustomed to our laws, must remember that there is a code for the Union, and also a code for the several states. Some discussion has ensued respecting treason, whether there could be any against a state without being against the Union itself. We suppose the laws against treason would not apply to a *stare*, it being political in its character. We would like to know how one could commit treason against a government of which he was not recognised as a member! To those who may feel any interest on that point, we refer them to p. 94, where we have enlarged on the great fact, that should ever be borne in mind, of the danger to political and religious liberty, so long as the law of the Punishment of Death exists. It may be safely laid down as a true position, that the very punishment of treason would be likely to increase the evil. It would probably operate as the law generally does, to make its own victims. 'Look,' said the executioner to an aged Irishman, showing him the bleeding head of a man just executed for rebellion, 'look at the head of your son.' 'My son,' replied he, 'has more than one head!'

It will be seen that the code of the Union punishes capitally *the confining of slaves on shipboard or offering them for sale.*

^b The following is the law in Maine.—No person, sentenced to death, is to be executed under *one year*, nor then, till the whole record of his conviction and sentence shall be certified by the clerk, under the seal of the court, to the Executive (governor) of the state, nor until a warrant shall be issued by said executive authority, under seal of the state, directed to the sheriff, commanding him to cause the sentence of death to be executed by hanging the offender by the neck, *within the walls or enclosure of the State Prison in Thomaston.* The sheriff (unless sick) shall be present at execution, with *two* of his deputies. He shall *request* the attendance of the county attorney and twelve citizens, including a surgeon and physician to be present ; and shall *permit* the prisoner's counsel, such minister of the gospel as the prisoner

NEW HAMPSHIRE.^c *Law of 1842.*

Murder.

VERMONT.^d *Law of 1839.*

Treason.

Murder.

MASSACHUSETTS.^e *Law of 1843.*

Treason.

Murder.

Arson. Rape.

desires, and his relations, to be present, and such other officer or guard as he may see fit to employ.—Doubts exist about the power of the Executive.

In a late journey in Maine, (1843,) we visited *Thorn*, now under sentence of death. He did not believe, himself, that the execution would ever take place. Such we found to be the general impression. The public are much indebted there to the labors of Professor UPHAM, of Bowdoin College, a man eminent for his learning and talents, and for his great moral worth. His work on Peace contains many cogent arguments, written in a beautiful style.

^cExecutions are private. The manner is similar to that of Maine. The law was abolished in the House in 1843, but lost in the Senate.

^dOne year, at least, must elapse between the sentence and execution, and then it is supposed it cannot take place without a warrant from the Executive. The law, though thought to be abolished, is certainly *nominally* retained, or it will be seen that since the modification in 1842, a man has been convicted of the murder of his wife. We present the sentence itself:

'It is the judgment of this court that for this offence you suffer death by hanging, to be executed upon you as soon as may be *in due course of law*, after the expiration of one year from this 21st day of April, 1843; and, in the mean time, and until the *Punishment of Death shall be inflicted upon you*, you will be forthwith committed to solitary confinement in the state prison at Windsor, in the county of Windsor.'

^eOur ancestors looked for precedents in the Jewish code, and punished breaches of the first and second commandments, witchcraft, blasphemy, *even in Pagan Indians*, cursing a parent, ravishing a maid, but not a married woman, &c. (See whole code, p. 159.) Several able reports have been made in the years 1831, 1836, 1837 and 1843. We believe that in every effort the substitute has been *imprisonment for life*. The present state of the public mind seems to make that demand. Among the opposers of reform on this subject, may be found Rev. CHARLES HUDSON, a member of the Senate in 1837. He urged against the abstract argument of taking life, that by the same reasoning we had no right to abridge human *liberty*. The point is well worthy the attention of legislators. Centuries may elapse before that is definitely settled. The public are greatly indebted to the labors of ROBERT RANTOUL, Esq. Both he and his father have been for years the unflinching advocates of reform in this law. We cannot speak too warmly of the labors of Mr. RANTOUL. His able Reports have done much both here and abroad. He has been indefatigable in his labors, both through good and through evil report. The friends of the proposed reform must ever feel largely indebted to him for his zeal in the cause of humanity.

Much has been gained. Executions are *private*. It was recommended, in 1832, to have a *black flag* raised over the place of execution! A very appropriate emblem.

Since writing the above, we have learned from the Hon. Mr. ROBINSON,

RHODE ISLAND.² *Law of 1838.*

Murder.
Arson.

CONNECTICUT.² *Law of 1839.*

Treason.
Murder.

NEW YORK.³ *O'Sullivan's Report, 1841.*

Treason.
Murder.
Arson in first degree.

NEW JERSEY. *Elmer's Digest, 1838.*

Treason.
Murder, first degree.

PENNSYLVANIA.¹ *Law of 1837.*

Murder, in first degree.

president of the Senate, that the motion to abolish Capital Punishment passed through the Senate in the last session, 1843, but was lost in the House. The record of the House stands, nays 103, yeas 53.

¹We have already noticed, on page 94, the very singular fact that treason was not a capital offence in this state, but that, by a singular providence, it was mainly done away by Mr. DORR himself, before the late movement was thought of, in regard to a change of government in that state. See Essay VIII., entitled 'Dangerous to Liberty.'

Probably treason would be considered a crime at *common law*, in all the states in which there is no statute upon the subject. This would be hanging a man by implication! It is understood, however, to be the opinion of JOHN Q. ADAMS, that there can be no treason against a state under the federal law.

²The public mind, to use a vulgar phrase, seems to be in a singular *fit*, in this state. During a journey there, in 1842, a gentleman of great intelligence remarked that the people in that state dare not do two things. First, they did not dare to abolish Capital Punishment. Second, they did not dare to put the law into execution. As the power lies in the Legislature, (instead of the Governor, as in Massachusetts,) the court was always sure to pass sentence so that it could not take place till after the meeting of that body, and then the friends would urge their petitions for commutation.

³Executions are private in this state. Whoever has read the Letters from New York, written by Mrs. CHILD, will remember how graphically she describes the circumstances connected with the late intended execution of JOHN C. COLT. See Part II. Essay VI.

The friends of the proposed reform are much indebted to J. O'SULLIVAN, Esq., of this state, for one of the ablest reports ever published; one that should be in the hands of every legislator.

¹Two facts are worthy of notice here. Treason is punished, first offence, six years. Capital Punishment was at one time abolished.

DELAWARE. *Law of 1829.*

Treason.
Murder.
Rape.
Burglary.
Arson.

MARYLAND.¹ *Dorsey's Collection, 1840.*

Treason, death, or six to twenty years' imprisonment.
Murder, death, or penitentiary for life.
Burning mills or barn, death, or three to twelve years' imprisonment.
Rape, death, or one to twenty-one years' confinement.

VIRGINIA.^kNORTH CAROLINA.¹ *Revised Statutes, 1837.*

Murder.
Rape.
Arson.
Mayhem.
Burglary.
Highway robbery, without benefit of clergy.
Forgery, second offence.
Horse-stealing, with benefit of clergy.
Slave-stealing.
Sodomy.
Buggery.
Bigamy, with benefit of clergy.
Duelling, if death ensues.
Crime against nature.
Burning a public building.
Accessaries.
Assault, with intent to kill.
Assault, second offence.
Circulating seditious publications among slaves, second offence, without benefit of clergy.
Free person aiding in a conspiracy, without benefit of clergy.
Slave returning after transportation, without benefit of clergy.
Taking a free negro or person of mixed blood out of state, with intention to sell, without benefit of clergy.

¹ See Remarks at the end of the codes.

^k See Remarks, p. 227, and Tables following.

¹ No provision is made for treason in this state, though we suppose it would be considered here as crime at *common law*. (See opinion of J. Q. ADAMS, under note on Rhode Island.) The old superstitious law of the benefit of clergy, which we have explained in a note at the conclusion, is still retained in two crimes—*horse-stealing* and *bigamy*. Whether it was thought that the clergy were more likely to steal horses, and have more than one wife, or whether they meant to grant impunity to them, we leave the reader to imag-

SOUTH CAROLINA.^m *Brevard's Digest*, 1814. *McCord's Statutes*, 1838.

Forgery.
Horse-stealing, second time.
Duelling, if death ensues.

GEORGIA.ⁿ *Prince's Digest*, 1837.

Treason, first degree.
Murder.
Circulating insurrectionary papers, either by a white, a negro, mustizzo, or free person.
Rape on a free white female, if a slave.
Assaulting free white female with intent to murder, if a slave.
Burglary or arson of any description contained in penal code of state, if a slave.
Murder of a slave or free person of color, if a slave.

ALABAMA.^o *Clay's Digest*, 1843.

Crimes punishable with death, when committed by slaves.

Insurrection or rebellion against the white inhabitants.

ine. It might not be *very* inconvenient to commit both crimes at the same time. It is rather singular that slave-stealing should be considered *capital* in a slaveholding state. We suppose this is not intended to apply to slaveholding. Killing a slave is also considered only as homicide, to which no penalty is annexed. Great care has been taken to prevent the circulation of seditious publications. It is said that in the preamble to the law, even the alphabet is calculated to excite dissatisfaction. We suppose, as Mrs. CHILD says, it is because 'freedom' can be spelt out of it. But we cannot pursue this strain of remark, our business being rather to present the codes than their peculiarities.

^m It has been found difficult to get a correct view of the various capital offences in this state. The state is still governed by the old common law of England, which has remained unimproved by modern legislation. For instance, perjury is punished by a law of 1562; rape by a law of 1285; mayhem by a law of 1403 and 1670.

We suppose it will not be said that these laws were made in consequence of the movements of *modern abolitionists*! Would it be incendiary at the south to circulate their own laws?

A storekeeper in South Carolina was nearly ruined by having unconsciously imported certain printed *handkerchiefs*.

ⁿ We find here that legislation has been employed to keep out incendiary publications, and the usual distinction made between 'persons' and 'slaves,' in regard to the penalty; yet the poor slave is not permitted to read the very law by which he is condemned. Even to learn him to read or write, is said to be a fine not exceeding five hundred dollars. Very consistent legislation, to doom a large portion of the community to ignorance, and then put them to death for it!

It is a singular fact in this state, that the prisoner has to pay for his own execution, if his estate be not insolvent. Whether (if the remark is not impious) he has a right to make his own bargain or not, we cannot learn. We suppose the price of hanging varies in different states. The price for murdering a man, in the enlightened, humane state of Massachusetts, on the gallows, for one or more, is **TWENTY DOLLARS!**

^o A distinction is made between persons and slaves. Legislation is rather

Murder, or attempt to kill any white person.

Rape, or attempt to commit, if a slave, free negro or mulatto.

Burglary.

Arson.

Accessory to any of the above crimes may be deemed principal.

Crimes punished with imprisonment when committed by whites.

Manslaughter, first degree, two to ten years' imprisonment in penitentiary.

Rape, penitentiary for life.

Selling or buying any free person for a slave, knowing him to be free, penitentiary not less than ten years.

Slave dying under correction, where no intention to kill, not less than ten years in penitentiary.

Burglary, imprisonment in penitentiary three to fifty years.

Arson, first degree, imprisonment in penitentiary not less than fourteen years.

Encouraging insurrection, by any free person, *death* or penitentiary for life.

Circulating any writing, drawing, &c., or books to excite discontent, penitentiary not less than ten years.

MISSISSIPPI. *Law of 1839.*

Murder.

Duelling, where death ensues within the state. Principal and second.

LOUISIANA.^P *Bullard & Curry's Digest, 1841.*

Murder.

Rape.

Arson.

Burglary.

Assault with a dangerous weapon.

Poisoning.

a perplexing business at the south, on this account. It is convenient sometimes, to recognise the slave as a man; at other times, 'a personal *chattel*.' In the one case he is a subject of law; in the other, his master may sue for damages or sell him as one of his cattle. As 'a personal *chattel*,' he cannot testify in court against any white man, nor form any contracts. But we cannot carry out the comparison. The laws themselves present a faithful exposition of the feelings and views of slaveholders. We may find laws better than a people, but we seldom find the people better than their laws. Five crimes are punished with death here, when committed by *slaves*, while not one is capital when committed by the whites. The manslaughter of a slave by a slave, or free negro, is punished by thirty-nine stripes or less, or branding in the hand. How carefully the life of the '*personal chattel*' is guarded. Thirty-nine stripes if a slave kill a slave; but death if the same slave kill his master. Death or imprisonment is the law here against the circulation of incendiary publications by a white, certain death if a slave.

^P We find no law against treason in this state. It is death in the code of the Union, and in every state where any provision is made, except Pennsylvania and Delaware. It is rather a complex question, we believe, with politicians, whether there could be treason against a state and not against

Writings of a seditious nature.
Killing in a duel.

ARKANSAS. *Revised Statutes, 1836.*

Treason.
Murder.
Sodomy.

TENNESSEE. *Caruther's and Nicholson's Collection, 1836.*

Murder, first degree.

KENTUCKY. *Morehead & Brown's Digest, 1834.*

Treason, six to twelve years' confinement.
Murder.
Arson of the penitentiary.

OHIO. *Revised Code, 1831.*

Murder, first degree.

MICHIGAN. *Revised Statutes, 1838.*

Treason.
Murder, first degree.

INDIANA. *Revised Statutes, 1838.*

Treason.
Murder.

ILLINOIS. *Revised Statutes, 1833.*

Treason.
Murder.

MISSOURI. *Revised Statutes, 1835.*

Treason.
Murder, first degree.
Exciting insurrection among slaves, free blacks, or mulattoes.
Rape, by castration, if committed by negro, mulatto, or free colored person.

DISTRICT OF COLUMBIA.

This portion of territory is governed by the laws of Maryland and Virginia, both having ceded a portion of their territory. Congress, however, has passed laws relating to slavery at different periods.

the general government. For some remarks touching this point, see Essay VIII. p. 88, and a remark of JOHN Q. ADAMS, in the note on Rhode Island, in these notes.

Mr. Livingston's code was never adopted in Louisiana. It excluded the punishment of death. We cannot mention his name without emotions of pleasure. Possessing a mind of great energy, a retentive memory and a brilliant imagination, he soon rose to distinction in the profession of the law. He early and zealously advocated an amelioration in the penal jurisprudence of his country, especially in regard to the punishment of death. His writings display uncommon vigor, keenness and refinement. His merits may well claim for him one of the most distinguished places in the annals of philanthropy. When he raised his voice, but few had thought of our blood-stained code, or of the awful desolation of the gibbet. His writings have tended to enlighten many minds, and they will continue to have their influence till the law of blood shall no longer stain our statutes.

VIRGINIA.

We have found no thorough revision since 1819. There have been some modifications. The tables were carefully prepared by Judge STROUD, in his Sketch of the Slave Laws in 1827. We hope that alterations have been made, for the honor of the state. Should it be so, it will show us slavery as it *was*. It presents indeed a black catalogue. It shows how much blood it takes to preserve the 'patriarchal institution,' 'the corner-stone of our republic.' Only five crimes are punished with death when committed by whites, and among these is duelling. The negroes never descend so low as that. At least, we have never heard of a negro duel. It would be something new in the annals of crime. The *blacks* probably leave that for their enlightened Christian masters. Adultery, according to the law, is punished with a fine of twenty dollars, while setting fire to a bridge of the value of one hundred dollars, by a *slave*, is death. How humane! How carefully morals must be guarded in Virginia! Really, with such a code, we should feel, were we an inhabitant of this state, that we were sleeping upon a rocking volcano.

For the better understanding of this code, we present Judge STROUD'S explanation:

'The reader will bear in mind, that the *numeral signs* PREFIXED to the crimes named in the *first* column of this table, [see table,] are not designed to convey the idea, that they are *severally* EXPONENTS of *one crime ONLY*; but are used, in connection with similar numeral signs, occupying similar places in the second and third columns of the table, merely as a convenient means of indicating the correspondence of the crimes, and their specific punishments. So far from having the former signification, it will be found that the table comprises at least 71 crimes for which SLAVES are CAPITALLY punished, though in none of these are whites punished in a manner more severe than imprisonment in the penitentiary. Thus, No. 3 contains at least FIVE crimes; No. 11, two; No. 13, at least FOUR; No. 14, at least THIRTY; No. 15, at least FIVE; No. 16, at least TWELVE.'

P. S. Since writing the above, we have learned that, by a law of March, 1824, persons convicted of any offence, which by any existing law would subject them to imprisonment for life in the penitentiary, are to be punished with death by hanging. This is what we might call a *retrograde* improvement.

March 12, 1834, a committee was appointed to revise the Criminal Code, and to report on the expediency of abolishing the Punishment of Death.

CODE OF VIRGINIA.

| CRIME. | PUNISHMENT OF SLAVERS. | PUNISHMENT OF WHITE PERSONS. |
|--|---|---|
| 1. Murder, in the second degree. | 1. Death. * 1 R. C. 497. | 1. Imprisonment for not less than five, nor more than eighteen years. 1 R. C. 617. |
| 2. Being accessory to arson. | 2. Death. 1 R. C. 587. | 2. Imprisonment for not less than ten, nor more than twenty-one years. 1 R. C. 687. |
| 3. Wilfully setting fire to a barn, a stable, corn-house, or other house, or for advising, counselling, aiding, abetting, or assisting any person, whether bond or free, in the perpetration of either of these offences. | 3. Death. 1 R. C. 588. | 3. Payment of the value of the property burnt or destroyed, and imprisonment for not less than five, nor more than five years. 1 R. C. 687. |
| 4. Wilfully setting fire to any stack or cock of wheat, barley, oats, corn, or other grain, hay, straw, or fodder, or advising, counselling, aiding, abetting, assisting, in the perpetration of either of these offences. | 4. Death, <i>within</i> the benefit of clergy. 1 R. C. 587. | 4. Same punishment as No. 3. 1 R. C. 687. |
| 5. Feloniously breaking, either in the day or night, into any warehouse or storehouse, &c., taking money, goods, &c., of the value of four dollars, or aiding, assisting, &c. &c. | 5. Death. 1 R. C. 588. | 5. Imprisonment for not less than one, nor more than ten years. 1 R. C. 688. |

* Whenever death is noted as the punishment in this table, it is to be understood *without benefit of clergy*, unless otherwise mentioned; and imprisonment, simply, means *of hard labor in the penitentiary*. (See note at the end of the "Codes of the several States.")

| CRIME. | PUNISHMENT OF SLAVES. | PUNISHMENT OF WHITE PERSONS. |
|---|---|---|
| 6. Stealing hogs, <i>third</i> offence. | 6. Death. 1 R. C. 574. | 6. Imprisonment for not less than five, nor more than ten years. 1 R. C. 617, 618. |
| 7. Embezzling a record of a court. | 7. Death. 1 R. C. 572. | 7. Imprisonment for not less than one, nor more than ten years. 1 R. C. 572. |
| 8. Horse-stealing. | 8. Death. 1 R. C. 575. | 8. Restoration of property stolen, and imprisonment for not less than five, nor more than ten years. 1 R. C. 575. |
| 9. Harboring or concealing a horse-thief, with knowledge of the theft. | 9. Death, <i>within</i> clergy. 1 R. C. 576. | 9. Imprisonment for not less than six <i>months</i> , nor more than four years. 1 R. C. 575, 576. |
| 10. Counterfeiting, or assisting to counterfeit, any coin, or the note of a chartered bank. | 10. Death. 1 R. C. 581. | 10. Imprisonment for not less than ten, nor more than twenty years. 1 R. C. 578. |
| 11. Passing, or attempting to pass, a counterfeit coin or note, knowing the same to be counterfeit. | 11. Death, <i>within</i> clergy. 1 R. C. 581. | 11. Same as No. 10. 1 R. C. 578. |
| 12. Counterfeiting the seal of any incorporated bank, &c. | 12. Death, <i>within</i> clergy. 1 R. C. 581. | 12. Imprisonment for not less than five, nor more than fifteen years. 1 R. C. 579. |

CODE OF VIRGINIA, CONTINUED.

| CRIME. | PUNISHMENT OF SLAVES. | PUNISHMENT OF WHITE PERSONS. |
|---|---|---|
| 13. Forging, or altering, or assisting, or abetting, &c. &c. to forge, a post note, or check, on an incorporated bank. | 13. Death, within clergy. 1 R. C. 581. | 13. Imprisonment for not less than two, nor more than ten years. 1 R. C. 579. |
| 14. Forging, or altering, or assisting so to do, a land warrant; or any paper bill of credit of the United States; or a certificate, or manifest, or receipt, of a public inspector of flour, hemp, tobacco, &c.; or a loan-officer's certificate; or a certificate of the stock of the State, or of the United States, or of any bank, or any other chartered company; or any other certificate, issued under the authority of the State, or of the United States; or any record of a court, or public officer, or of any body politic or corporate, &c. &c. &c. | 14. Death, within clergy. 1 R. C. 581. | 14. Imprisonment for not less than one year, nor more than ten years. 1 R. C. 580. |
| 15. Forging, or altering, or erasing, or procuring to be forged, altered, or erased, or willingly assisting, &c. in forging, &c. any stamp, brand, or mark of an inspector of tobacco, with intent to defraud, &c. | 15. Death, within clergy. 1 R. C. 581. | 15. Same as No. 14. |
| 16. Cutting off the tongue of another, or disabling the same by clipping, biting, or wounding; putting out an eye; slitting, cutting off, or biting off the nose, ear, or lip; disabling or disfiguring the nose, ear, or lip; or disabling, by wounding any limb or member of another; shooting or stabbing, with intent to maim, disfigure, &c. | 16. Death, within clergy. 1 R. C. 582. | 16. Imprisonment for not less than one year, nor more than seven years, and liable to the party injured, in an action for damages. 1 R. C. 582. |

| CRIME. | PUNISHMENT OF SLAVES. | PUNISHMENT OF WHITE PERSONS. |
|--|--|--|
| 17. Rape on a white woman. | 17. Death. 1 R. C. 585. | 17. Imprisonment for not less than ten, nor more than twenty-one years. 1 R. C. 585. |
| 18. Attempting to commit a rape on a white woman. | 18. Death. Act of Assembly of 1823, c. 34, §3. | 18. Not a statutable offence, but punishable as an assault and battery according to the common law, which is fine and imprisonment, (not at hard labor,) at the discretion of the court. |
| 19. Burglary. | 19. Death. See No. 5. | 19. Imprisonment for not less than five, nor more than ten years, and restitution of property, when any has been taken. 1 R. C. 617. |
| 20. Wilfully setting fire to or burning a bridge, of the value of one hundred dollars. | 20. Death. | 20. Penitentiary not less than two, nor more than ten years. |
| 21. Wilful injury to a canal. | 21. Death. | 21. Same. |
| 22. Buggery with man or beast. | 22. Death. | 22. Penitentiary from one to ten years. |
| 23. Wilfully assaulting with intention to kill. | 23. Death, without benefit of clergy. | |
| 24. Killing in a duel. | 24. Death. | 24. Death. |

REMARKS ON THE PHRASE 'WITHOUT BENEFIT OF CLERGY.'

THE phrase '*without benefit of clergy*,' is very generally misapprehended. It is supposed to mean that the culprit was to be deprived of the attendance of a spiritual guide in his last moments. BLACKSTONE says it meant 'exemption of the persons of clergymen from criminal process before the secular judge in a few particular cases.' This was the true and original meaning of the '*privilegium clericale*.' As clergymen increased in wealth, power, honor, number, and interest, they took advantage of the exemption. The test originally was, that no one should be admitted to the privilege; but such as had the *habitus et tonsuram clericalem*. But afterward, another criterion was established. Every one that could read was accounted a clerk or *clericus*. But when the art of printing was discovered in the fourteenth century, it was no longer a test, for soon the laity learned to read as well as the clergy. Other expedients were soon adopted. Persons were admitted only once to the *benefit of the clergy*. When laymen were allowed the privilege, they were burnt with a hot iron in the brawn of the left thumb.

The distinction now is scarcely recognised in our country, though it exists nominally in Virginia, Kentucky, North and South Carolina. In this last state, Judge STROUD says, 'a distinction is made by *express law*, between males and females convicted of *clergyable* offences. Both are branded; but a male is discharged without further punishment; a female may be whipped, placed in the stocks, or imprisoned for the space of a year afterwards, at the discretion of the court.' It is not to be wondered at that '*benefit of clergy*' should still be retained in some of the slaveholding states, when we remember that only one in one hundred and fifty-five can read! But we close by giving an anecdote, and the form of this ancient custom, handed to us by ROBERT RANTOUL, Esq. :—

The clerk of the court handed the prisoner a missal. If he read the PATER NOSTER, the officer cried out, 'Legit, clericus est;—he reads; he is a clerk;—and his punishment was remitted. Sometimes the prisoner deceived the court by getting some one to prompt him as he apparently read. A story is told of one who could not read, but who held up the missal or parchment, with his thumb on the place. 'Take away thy thumb,' said the prompter. The poor ignorant prisoner, supposing this to be in the book, cried, 'Take away thy thumb;' and he was detected. See BLACKSTONE'S Commentaries, vol. iv. chap. 28.

WE have presented all the capital offences in the code of the Union and the codes of the several states. Such a survey suggests a variety of reflections, but we have not room for them. The list is presented to the reader to use in any manner that may have a moral or religious bearing on the community. Our laws are written in blood. In all the twenty-six states, only Maryland has arranged its code so that the offender may be punished capitally or by imprisonment. And even here the reign of blood is not over; for, at this moment, a poor fellow-being lies there in his cell, awaiting the hour of his execution. Twenty days must elapse between the sentence and the execution. In Maine and Vermont also, two

convicts are under sentence of death. (See notes on their codes.) In the first state we have conversed with the convict himself. Humanity has partly triumphed in these two states. The public vengeance has time to cool. One year at least must elapse between the sentence and the execution. In Maine, it must be in *private*, and takes place, if not *forbidden* by the executive; in Vermont, if *ordered*. Doubts exist, however, in both states, respecting the authority of the executive.

We believe our labor will do good. Very few persons know the number or character of the various capital offences in the several states. It will be found, generally, that those who violate the laws, have the least opportunity of becoming acquainted with them. Indeed, very few prisoners know even the meaning of the terms employed, such as *Arson, Burglary, Mayhem, &c.* And how should they know? We have a large class of men who spend their whole lives in studying the laws, and even they differ about their meaning. What can be expected, then, of those who have no such advantages! And then the very language is indistinct; it is sometimes mere jargon. But we cannot enlarge on so fruitful a theme as the 'glorious uncertainty of the law.' This we did in Essay X., where we presented the Irremediability of the present law. To illustrate our views, we will give two anecdotes, where persons were condemned, who, from their ignorance, could probably have not understood the law.—A youth was condemned for burglary. He afterwards wrote a very feeling letter to the judge, stating that he did not know the name of the crime which he had committed.

The other case is that of a country lad who was condemned, and supposed to be *innocent*. He wrote the following letter to his parents:

'i Now took my pen for these last time to write to you Father Mother brother sister and All my Realtions wich [while] it is but a short time before i [am] called hence to apear before that tribunle Judge—may the lord have Mearcy on Me—wich [while] i took my trile before the Judge and Jury wich [while] they past the videdict [verdict] of death on me—what I lay to heartt is—when it comes over me to think that on [one] fieow [fellow] creature should Swear a nother folowe creature life away worngfully—i write to you the Sentement of mind to tell you that when i Mount the Fatle Saeffold [fatal scaffold] that the lord from heaven Nowes that i am innocent As child unborn.'

Mr. LIVINGSTON suggests that this is a subject which might be made familiar in our common schools. A good suggestion.

APPENDIX II.

ILLUSTRATIONS OF KINDNESS.

IN the course of our labor, we have frequently alluded to the power of kindness upon the human soul. We did not commence this work so much with a view to bring out and illustrate by examples, that point, but rather to show the injustice and the inhumanity of the Punishment of Death. We have not laid before the reader any very distinct plan respecting the proper mode of discipline with prisoners. We want to see the criminal spared. We have proceeded to a certain point. We say to the state government under which we live, *spare the criminal; he is my brother; do not mar the image of God.* The taking his life will not bring back his victim; it will not prevent others from the commission of crime. And here we have been obliged to stop in this volume. The proper treatment of the criminal, and the various causes and remedies of crime, will furnish abundant materials for another volume, should it be thought advantageous to the cause of humanity.

But to open the way, and to meet the frequent objection that criminals are beyond the reach of moral influences, we present a few anecdotes which have a direct bearing on that view of the subject. We regret, with the reader, that we could not have gone farther. But when the community are prepared to appreciate the great doctrine of the Inviolability of Human Life, then we may hope to see some way opened, some new development of moral power, by which the heart of every criminal can be touched, and prisons become churches, schools or hospitals. For some instances of the power of kindness, we are indebted to the Rev. Mr. MONTGOMERY, of Portsmouth, N. H., whose labors in this department have done great service to the cause of humanity.

MRS. FRY'S VISIT TO NEWGATE.

She applied for leave to the governor to visit the female prisoners. He attempted to dissuade her. 'You will be disgusted with their behavior and language,' said he. 'I am almost afraid, myself, to enter their apartment, they are so vile.'

'I am fully aware of the danger,' meekly replied Mrs. Fry. 'I do not go in my own strength. God will protect me.'

'But, madam, if you are determined on entering this den of iniquity, pray, leave your purse and watch behind,' said the governor.

'I thank thee; I am not afraid; I do not think I shall lose anything,' replied this heroic woman.*

She addressed them in the most gentle accents. 'You seem unhappy,' said she; 'you are in want of clothes; would you not be pleased if some one came to relieve your misery?'

'Certainly,' said one, 'we need clothes.' 'But nobody cares for us, and where can we find a friend?' said another.

'I am come to serve you, if you will allow me,' said Elizabeth Fry. She then went on to express her sympathy for them, and offer them hope that they might improve their condition. She did not say a word about the crimes they had committed, nor reproach them. She came to comfort, and not to condemn. When she was about to depart, the women thronged around her.

'You are leaving us,' said they, 'and you will never come again.'

'Yes, I will come again, if ye desire it,' she replied.

'We do! we do!' was echoed round the apartment.

She read to them the Bible; the parable of the laborers in the vineyard. Some asked who Christ was. Others said he did not come for them; others, it was too late for them. She passed the whole day with them, softening, by her words of peace, the most turbulent and perverse tempers. The reform was most astonishing; and, thanks to her perseverance and the years she has devoted to this pious undertaking, a total change has been effected in the female department of this prison. The influence of virtue has prevailed, and many wretched beings have found Newgate an asylum of repentance and heavenly hope.

CONDUCT OF CAPTAIN PILLSBURY, OF WEATHERSFIELD PRISON, CONNECTICUT.

[From the 'Retrospect of Western Travel,' by Miss Martineau.]

His moral power over the guilty is so remarkable, that prison-breakers, who can be confined nowhere else, are sent to him to be charmed into staying their term out. I was told of his treatment of two such. One was a gigantic personage, the terror of the country, who had plunged deeper and deeper in crime for seventeen years. Captain Pillsbury told him when he came, that he hoped he would not repeat the attempts to escape which he had made elsewhere. 'It will be best,' said he, 'that you and I should treat each other as well as we can. I will make you as comfortable as I possibly can, and shall be anxious to be your friend; and I hope you will not get me into any difficulty on your account. There is a cell intended for solitary confinement, but we have never used it, and I should be sorry ever to have to turn the key upon anybody in it. You may range the place as freely as I do, if you will trust me as I shall trust you.' The man was sulky, and for weeks showed only very gradual symptoms of softening under the operation of Captain Pillsbury's cheerful confidence. At length, information was given to the captain of this man's intention to break prison. The captain called him, and taxed him with it; the man preserved a gloomy silence. He was told that it was now necessary for him to be locked up in the solitary cell, and desired to follow the captain, who went first, carrying a lamp in one hand and the key in the other. In the narrowest part of the passage, the captain (who is a small, slight man) turned round and looked in the face of the stout criminal. 'Now,' said he, 'I ask you

*To show the honesty of prisoners, a fact now lies before us, related by Howard himself.—'I never received an insult from either jailer or prisoner, nor lost one article, except a pocket handkerchief, which was afterwards returned to me by a prisoner, who had picked it up when it dropped from my pocket.'

whether you have treated me as I deserved? I have done everything I could think of to make you comfortable; I have trusted you, and you have never given me the least confidence in return, and have even planned to get me into difficulty. Is this kind? And yet I cannot bear to lock you up. If I had the least sign that you cared for me——' The man burst into tears. 'Sir,' said he, 'I have been a very devil these seventeen years; but you treat me like a man.' 'Come, let us go back,' said the captain. The convict had the free range of the prison as before. From this hour he began to open his heart to the captain, and cheerfully fulfilled his whole term of imprisonment, confiding to his friend, as they arose, all impulses to violate his trust, and facilities for doing so which he imagined he saw.

Conduct of the same individual to a prisoner who had sworn to murder him.

He sent for him to shave him, allowing no one to be present. He eyed the man, pointed to the razor, and desired him to shave him. The prisoner's hand trembled, but he went through it very well. When he had done, the captain said, 'I have been told you meant to murder me, but I thought I might trust you.' 'God bless you, sir! you may,' replied the regenerated man. Such is the power of faith in man.

Conduct of the same individual to a prisoner who had attempted to escape.

He fell, and hurt his ankle very much. The captain had him brought in and laid on his bed, and the ankle attended to, every one being forbidden to speak a word of reproach to the sufferer. The man was sullen, and would not say whether the bandaging of his ankle gave him pain or not. This was in the night, and every one returned to bed when this was done. But the captain could not sleep. He was distressed at the attempt, and thought he could not have fully done his duty by any man who would make it. He was afraid the man was in great pain. He rose, threw on his gown, and went with a lamp to the cell. The prisoner's face was turned to the wall, and his eyes were closed, but the traces of suffering were not to be mistaken. The captain loosened and replaced the bandage, and went for his own pillow to rest the limb upon, the man neither speaking nor moving all the time. Just when he was shutting the door, the prisoner started up and called him back. 'Stop, sir. Was it all to see after my ankle that you have got up?'

'Yes, it was. I could not sleep for thinking of you.'

'And you have never said a word of the way I have used you!'

'I do feel hurt with you, but I don't want to call you unkind while you are suffering as you are now.'

The man was in an agony of shame and grief. All he asked was to be trusted again when he should have recovered. He was freely trusted, and gave his generous friend no more anxiety on his behalf.

CONDUCT OF AN AGENT OF THE BIBLE SOCIETY IN THE MEXICAN PROVINCE OF TEXAS.

[From the Manual of Peace, by T. C. Upham.]

His course lay through a piece of woods, where two men waylaid him with murderous intentions; one being armed with a gun, the other with a large club. As he approached the place of their concealment, they rushed towards him; but finding that no resistance was offered, they neither struck nor fired. He began to reason with them; and presently they seemed less eager to destroy him in haste. After a short time he prevailed on them to sit down with him upon a log, and talk the matter over deliberately; and finally he persuaded them to kneel with him in prayer; after which, they parted with him in a friendly manner.

ANECDOTE OF WILLIAM LADD.

[From the Democratic Review.]

The following anecdote is one of the best we have ever seen. Mr. LADD was often requested to permit it to be published before his death, but he said he preferred to keep it as his best. Since his decease, Mr. SAMUEL E. COVES, his friend and associate in the great Peace enterprise, has given it to the world. There would be few quarrels, if all were governed by the principle developed in this admirable anecdote.

It was not mere good nature, but the adoption of the peace principles, which made him thus gentle-hearted. A story, which he often told with peculiar relish, will illustrate the moulding of his character—the gradual progress of his mind in adopting the peace principles. ‘I had,’ said he, ‘a fine field of grain, growing upon an out-farm, some distance from the homestead. Whenever I rode by, I saw my neighbor Pulsifer’s sheep in the lot, destroying my hopes of a harvest. These sheep were of the gaunt, long-legged kind, active as spaniels; they could spring over the highest fence, and no wall could keep them out. I complained to neighbor Pulsifer about them, sent him frequent messages, but all without avail. Perhaps they would be kept out for a day or two, but the legs of his sheep were long, and my grain rather more tempting than the adjoining pasture. I rode by again—the sheep were all there; I became angry, and told my men to set the dogs on them, and if that would not do, I would pay them if they would shoot them.

I rode away much agitated; for I was not so much of a peace man then as I am now, and I felt, literally, full of fight. All at once a light flashed in upon me. I asked myself, would it not be well for you to try, in your own conduct, the peace principles you are preaching to others? I thought it all over, and settled down my mind as to the best course to be pursued.

The next day I rode over to see neighbor Pulsifer. I found him chopping wood at his door. ‘Good morning, neighbor.’ No answer. ‘Good morning,’ I repeated. He gave a kind of grunt, like a hog, without looking up. ‘I came,’ continued I, ‘to see you about the sheep.’ At this he threw down his axe, and exclaimed in a most angry manner, ‘Now, a’n’t you a pretty neighbor, to tell your men to kill my sheep! I heard of it,—a rich man like you to shoot a poor man’s sheep!’

‘I was wrong, neighbor,’ said I,—‘but it won’t do to let your sheep eat up all that grain; so I came over to say that I would take your sheep to my homestead pasture, and put them in with mine; and in the fall you may take them back, and if any one is missing, you may take your pick out of my whole flock.’

Pulsifer looked confounded; he did not know how to take me. At last he stammered out, ‘Now, Squire, are you in earnest?’ ‘Certainly I am,’ I answered; ‘it is better for me to feed your sheep in my pasture on grass, than to feed them here on grain; and I see the fence can’t keep them out.’

After a moment’s silence—‘The sheep shan’t trouble you any more,’ exclaimed Pulsifer; ‘I will fether them all. But I’ll let you know that when any man talks of shooting, I can shoot too; and when they are kind and neighborly, I can be kind too.’ The sheep never again trespassed on my lot.

‘And, my friends,’ he continued, addressing the audience, ‘remember that when you talk of injuring your neighbors, they talk of injuring you. When nations threaten to fight, other nations will be ready too. Love will beget love—a wish to be at peace will keep you in peace. You can only overcome evil with good—there is no other way.’

A NEW WORK,
ENTITLED
NAMES AND TITLES OF JESUS,
WITH BEAUTIFUL ENGRAVINGS.
BY CHARLES SPEAR, OF BOSTON
SIXTEENTH EDITION.

THIS work is of a peculiar character; embracing a field in the religious world never fully occupied before. The great object is to give a moral and practical view of the Saviour, and to illustrate all the various Names and Titles by which he is distinguished in the Scriptures. For instance: He is called 'The Light of the World;' 'The True Vine;' 'The Physician;' 'Wonderful,' &c. &c. The Author finds eighty appellations applied to Jesus, and thus actually brings before the reader EIGHTY different views of the Saviour of the World. The Author was some years in preparing the work for publication.

About one thousand copies were engaged before the work went to press. It was published in January, 1841, and has now reached the SIXTEENTH EDITION.

The volume contains 406 pages, duodecimo, handsomely printed, elegantly bound, with splendid Engravings from one of the first artists in the United States. Price \$1.00.

The Author has been advised, in consequence of ill health, and other circumstances, to travel with his own work, instead of placing it in the hands of booksellers.

All orders may be sent to the Author's address, Rev. CHARLES SPEAR, 24 London Street, Boston.

FROM "THE NAZARENE," PUBLISHED AT PHILADELPHIA.

"To those who are acquainted with the author, it would be useless for us to say a word in commendation of this work. He is well known as an able and experienced writer; and the deep spirit of Christian piety and humility which has ever characterized his conduct, and been diffused through the productions of his pen, will show at once his fitness to handle in a proper manner, the peculiar subjects discussed in this book. The work cannot be otherwise than interesting to every reader; and it will form a valuable addition to the library of every Christian."

FROM REV. JAMES FLINT, D. D., OF SALEM.

SALEM, JUNE, 1841.—"I have examined a large number of the articles in Mr. Spear's book; and from this examination I feel myself authorized to recommend the work, as comprising in a small compass the substance of the interpretations, in which the most learned and enlightened biblical critics have agreed, of the Names and Titles applied to the Saviour in the Bible. It cannot fail to afford valuable information to the general reader, and, what is still better, to awaken in the heart of the Christian deep and delightful emotions of thankfulness and love to God and his Son,—to the Father, who sent, and to the Son, who came to be the Saviour of the world. JAMES FLINT."

FROM THE BOSTON QUARTERLY REVIEW.

"This book would seem to be, as the trade would say, a successful one; for although it has been published but a few months, it has already reached a fourth edition. * * * * It is the production of a serious, earnest mind, disposed to religious reflection, and possessed of much genuine religious feeling. The book is rather a devotional book than otherwise, and is quite creditable to the industry, the acquirements, the intellect, and the heart of the writer. It is a book from which, we doubt not, many may derive much spiritual nutriment."

FROM REV. JOHN G. ADAMS, OF MALDEN.

"With very few exceptions, we have never perused a gospel work that has yielded us purer spiritual pleasure than this. While we have lingered over its pages with full heart and eye, we have felt the burning of that love within us which we pray may wax warmer and warmer, and go up a pure and steady flame of devotion to Him 'who spared not his own Son, but freely delivered him up for us all,' and who will 'with him also freely give us all things.'"

FROM REV. CHARLES W. UPHAM, OF SALEM.

"SALEM, JUNE 8, 1841.—A book has been placed in my hands, written by Rev. Mr. Spear, on the 'Names and Titles of the Lord Jesus Christ,' and commended to my notice by a learned and eminent Unitarian Minister. I have had opportunity to examine some of the chapters particularly, and to look over the whole work, and it gives me pleasure to say that I think it a valuable and acceptable publication. It is a book which all may understand, and conveys much important information. Its plan is good, and its spirit is excellent; and in a popular form, it presents the results of much learned labor and research. I consider its circulation desirable, and earnestly recommend it to all friends and seekers of Christian truth, and scriptural knowledge.

CHARLES W. UPHAM."

FROM REV. JOHN M. MERRICK, OF WALPOLE.

"WALPOLE, MARCH 24, 1842.—I have read with pleasure and profit the greater part of a work entitled the '*Titles of Jesus*,' by the Rev. Mr. Spear, and am happy to add my testimony to the many he has already received, of its great worth. I cordially recommend it as a book of a serious, practical character, admirably adapted to the purposes of Christian instruction and edification.

JOHN M. MERRICK."

FROM THE NEW YORK CHRISTIAN MESSENGER.

"We have had no opportunity to peruse the work, but from the nature of the subject, and the well-known abilities and deep devotional spirit of the author, we have no doubt that he has produced an excellent—a useful work. But aside from this, we can indulge great confidence in it, from the universal commendation it has met with, wherever it has been known, and the almost unparalleled sale which has attended it. It is but a few months since it was first published, and the fifth edition is just issued from the press."

FROM REV. HENRY BACON, OF PROVIDENCE.

"This work will be found very interesting and useful. The *name* admits the mind in a moment into the *variety* that will spread before it as soon as the book is opened; and we venture to promise any individual, who has the least taste for religious reading, that he will prize this volume highly as soon he becomes acquainted with its contents."

FROM REV. WM. NEWELL, OF CAMBRIDGE.

"CAMBRIDGE, OCT. 18, 1841.—From a cursory examination of your work, and the strong testimonies in its favor which you have received from competent judges of its merits, I do not hesitate to recommend it to all who are interested in the subjects of which it treats. Though I may differ from you in some of your conclusions and criticisms, I cordially approve of the spirit and tendency of the work, and think it calculated to do good. WM. NEWELL."

FROM REV. J. M. AUSTIN, OF DANVERS.

DANVERS, MARCH 14, 1842.—It is difficult to express the pleasure which I have received, and continue to receive, in perusing this book. So richly abounding in useful instruction—so pathetic and touching, so persuasive to purity and goodness, in its moral influences—and yet so child-like and unostentatious in its pretensions—as a whole, it belongs to the first class of the religious works of the age. I am confident it cannot be read without benefit both to the head and the heart, nor without an increased sense of the claims of the Saviour upon our gratitude and love. It is with the utmost confidence and pleasure that I recommend it to Christians of every sect, as a most valuable family manual. Let all obtain it, and they will secure a treasure of the highest worth.

"The eighth edition is rendered more attractive, by the addition of two beautiful engravings, illustrative of the raising of the Widow's Son, and of the parable of the Lost Sheep. These plates are executed with skill, and are very expressive. J. M. AUSTIN."

FROM REV. JOSEPH ANGIER, OF MILTON.

"Mr. Spear has given us, in his 'Titles of Jesus,' a good book. It contains much valuable information, is characterized by good sense and liberality, and breathes a spirit of sincere and fervent devotion, which cannot fail to recommend it to the unprejudiced of all denominations. From some of its opinions and criticisms it becomes me candidly to avow my dissent. But the book is rather practical and devotional than doctrinal; and as such, I consider it a valuable addition to our religious literature, and give it my confident and hearty approval and recommendation. JOSEPH ANGIER."

FROM REV. A. P. PEABODY, OF PORTSMOUTH.

I have examined to some extent the work on the Titles of Jesus, by Rev. Mr. Spear, and cheerfully testify that the views which it presents seem to me sound and correct, and that the book is adapted to the instruction and edification of Christian readers generally.

A. P. PEABODY.

FROM THE AGE, AUGUSTA, ME.

'This work gives evidence of much industry and research, as well as genuine religious feeling. We take pleasure in saying that, in our judgment, it will form a valuable addition to the library of any Christian of any sect.'

FROM REV. FREDERICK A. FARLEY, OF BROOKLYN, N. Y.

Such a work may prove very useful to various classes of readers of the sacred text, and be very serviceable to Sunday School teachers. I cheerfully unite with many of my brethren in the ministry in commending it to the patronage and study of my brethren in the faith.

FRED. A. FARLEY.

FROM REV. JASON WHITMAN, OF PORTLAND.

Without undertaking to endorse every sentiment expressed by the author, I must say that I believe the work well calculated to enlighten the mind and warm the heart. I can therefore recommend the work to all who wish for a better knowledge of the Saviour, or a more pure, devout and intimate communion with him. JASON WHITMAN.

PORTLAND, August 10, 1842.

REV. AND DEAR SIR:—Your book is a treasure. The only wonder to me is that you ever found time to make it so *short*. Volumes must have accumulated upon your hands in preparing eighty chapters upon as many distinct titles of the Saviour; and you must allow me to congratulate you on your extraordinary success upon two points:—In condensation, and in the avoidance of everything, so far as I can perceive, which smacks of sectarianism. Wishing you the reward you so well deserve, here and hereafter, for your labors in this behalf,

I am, dear sir,

Your friend and sincere well-wisher,

JOHN NEAL

FROM THE EASTERN ARGUS.

We do not hesitate to say that this work ought to be in the library of every Christian family—no matter to what denomination its members may belong.

FROM REV. SYLVESTER JUDD, JR., OF AUGUSTA, ME.

The book of the Rev. Mr. SPEAR, on the Titles of Jesus, I cheerfully recommend to the attention of all, and believe it well adapted to the great purposes of faith and practice. SYLVESTER JUDD, JR.

FROM REV. WILLIAM A. DREW, OF AUGUSTA, ME.

A beautiful book, and a *good* one; ay, one that does credit to the author—and which does credit also to the denomination of which he is a member. It evidently was not prepared, as some other books are, to sell, but to instruct and edify its readers.

FROM THE EVENING GAZETTE, OF BOSTON.

The value and high estimation in which the work before us is held, may be conceived from the fact, that it has in less than two years reached twelve editions. The subject, in itself most beautiful, has been handled by the writer, Rev. Charles Spear, of Boston, in such a manner as to diffuse upon the pages of the volume the light of a Christian spirit, shining calmly and peacefully from every sentence. Now and then we notice a passage which will of course find opposition from sectarian feeling; but the tenor and spirit, in which even this is conveyed, are so truly Christian, that it does not jar upon the spirit of devotion. It is an instructive and pleasant work for the Sabbath, and the style of its execution does great credit to the author. It is for sale by the author.

FROM REV. BARZILLAI FROST, OF CONCORD, MASS.

I have examined several important chapters of Mr. Spear's book, called "Names and Titles of the Lord Jesus Christ." From these chapters, and from the manner in which it is recommended by the best judges, I am satisfied that it is written with ability and learning, and in an excellent spirit; and that it contains much useful instruction, especially for the common reader and the Sunday-school teacher.

BARZILLAI FROST.

Notices from Europe.

FROM "THE INQUIRER," PUBLISHED IN LONDON.

"The author has brought together, with great diligence, all the NAMES and TITLES which are in Scripture applied to Christ,—we might almost add, or have been imagined to be so applied,—amounting altogether to EIGHTY. Each of these he explains and illustrates practically—conveying much useful comment in a popular style, accompanied by a great variety of valuable, moral and devotional sentiment. That the work is adapted for general usefulness, is evident from its extensive and rapid sale in America. We believe it is as yet scarcely known at this side of the Atlantic, but it would probably suit the wants of many, and be esteemed a valuable addition to our stock of practical divinity. We have no hesitation in expressing our approbation of its prevailing opinions and tendency, and our hope that it will meet with a welcome amongst us.

"We believe Mr. Spear is right in thinking that no attempt so extensive as his own had previously been made. The Titles of Christ, which could be supposed to involve controversial considerations, have been examined by writers on opposite sides of the great disputed questions; but the treatment of them so extensively, as subjects for useful explanation and sources of practical improvement, is, we think, novel, and must have cost a good deal of labor and thought."

London, Jan. 23, 1843.

FROM "THE BIBLE CHRISTIAN," BELFAST, IRELAND.

"We cordially recommend all our readers to purchase this work. We recommend it to Christian families as a useful and interesting auxiliary to their devotional exercises. We recommend it to congregational libraries, as a work that will seldom be allowed to rest upon the shelves. We recommend it to Sunday-school teachers as one of the best Manuals we know, for rational explanation, and for practical lessons of piety and morality. And since it is one of the goodly fashions of the present day for all persons who would aspire to any degree of literary taste, to display literary ornaments on their drawing-room tables, we can confidently recommend it for this purpose too. In typography, paper and binding, it is beautifully got up. It contains two fine engravings, by an eminent American artist. And if visitors have occasionally to wait a few minutes for the appearance of the mistress of the house, we do not know how they could spend the time more pleasantly or more profitably, than in perusing a section of the '*Names and Titles of Jesus.*'"

Among the thousands who have purchased this work may be named the following:—

Hon. Josiah Quincy, LL. D., President of Harvard University.

Rev. William E. Channing, D. D.

“ Ezra S. Gannett,

“ Francis Parkman, D. D.

“ John Pierpont,

“ Chandler Robbins,

“ C. A. Bartol,

“ R. C. Waterston,

“ N. L. Frothingham,

“ James I. T. Coolidge,

“ F. D. Huntington,

“ F. T. Gray,

“ Samuel Barrett,

“ F. W. P. Greenwood,

“ John T. Sargent,

Boston.

Rt. Reverend Alexander Viets Griswold, D. D., Bishop of Massachusetts, Maine and Rhode Island; acting Bishop of New Hampshire; and senior and presiding Bishop of the Protestant Episcopal Church of the United States of America.

Rev. Henry Giles, of England.

Hon. S. Longfellow, Me.

“ Marcus Morton.

Rev. Addison Searle, Chaplain U. S. Navy.

Thomas H. Perkins, Boston.

Thomas C. Upham, Prof. of Metaphysics and Ethics, and Instructor in the Hebrew Language in Bowdoin College, Me.

Rev. S. J. May, Principal of the Normal School, Lexington.

“ George E. Ellis, of Charlestown.

“ Ichabod Nichols, D. D., of Portland.

“ Henry W. Bellows, of N. Y.

“ W. B. O Peabody, of Springfield, Mass.

S. B. Woodward, Superintending Physician of State Lunatic Hospital, Worcester.

W. C. Bryant, of N. Y.

Benjamin Abbot, formerly Principal of Exeter Academy, N. H.

Hon. John Q. Adams.

Hon. Charles Jackson, Boston.

“ William Prescott, Boston.

S. E. Sewall, Esq., Boston.

Samuel E. Coues, President of American Peace Society.

A New Work.

ESSAYS ON THE PUNISHMENT OF DEATH.

BY CHARLES SPEAR, OF BOSTON;
AUTHOR OF 'TITLES OF JESUS;' 'ESSAYS ON IMPRISONMENT FOR DEBT,' ETC.

WITH A FINE ENGRAVING.

FOURTH EDITION.

THIS work is intended to present a concise and practical view of the subject of Capital Punishment. For years the author has felt deeply interested in it, and has spent much time in the collection of facts. In its preparation he had access to many valuable foreign publications, scarcely known in this country.

CONTENTS.

PART I.—HISTORY AND OBSERVATION.

- ESSAY I.—SACREDNESS OF HUMAN LIFE.
- ESSAY II.—REVENGEFUL.
- ESSAY III.—SCRUPLES OF JURORS AND WITNESSES.
- ESSAY IV.—EFFECT OF PUBLIC EXECUTIONS UPON THE PRISONER.
- ESSAY V.—EFFECT OF PUBLIC EXECUTIONS UPON THE SPECTATORS.
- ESSAY VI.—EFFECT OF PUBLIC EXECUTIONS UPON DOMESTIC LIFE.
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- ESSAY IX.—FUTURE CONDITION OF THE SOUL.
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PART II.—SACRED SCRIPTURES.

- ESSAY I.—CAIN.
- ESSAY II.—COVENANT WITH NOAH.
- ESSAY III.—MOSAIC CODE.
- ESSAY IV.—TEACHINGS OF CHRIST.
- ESSAY V.—OBJECTIONS.
- ESSAY VI.—ENCOURAGEMENTS.

O'CONNELL'S Speech on the subject is embodied in the work.

A list of all the capital offences in the Union is given; a labor said by distinguished jurists never to have been accomplished before.

The work is published and sold by the Author, 24 London street, Boston. Having incurred great expense in the publication, and being of infirm health, with a large family, he looks to a generous public to sustain him in his humble efforts to ameliorate the condition of the poor criminal.

COMMENDATORY NOTICES.

[FROM THE NEW YORK TRIBUNE.]

We have here a most compact and forcible array of facts and considerations which forbid the legal slaughter of human beings—the best work by far that has ever appeared on the subject—simple, lucid, cogent and affecting. Every proposition urged against the continuance of the gallows is fortified by abundant citations of facts, accounts of executions, &c. &c., till it would seem impossible that any one should read and reflect on this book without a deep loathing for the code of blood, and an amazed pity for the infatuation of its advocates. If any man can read these ‘Essays,’ and not be convinced that legal killing has incited to four murders for every one it has prevented, he must, it seems to us, be steeled against the force of evidence and the fear of shedding innocent blood.

We hope this book will be widely circulated, though the author, being poor, publishes his book himself, and goes about to sell it as he can, which will retard its dissemination. We are sure a bookseller, who shall first procure some copies for this city, and let the public know it, must sell them rapidly. The facts here industriously collected—the recorded opinions of BECCARIA, BLACKSTONE, MONTESQUIEU, FRANKLIN, RUSH, SMOLLETT, LAFAYETTE, CHANNING, EDWARD LIVINGSTON, O’CONNELL, &c. &c.,—are alone worth double the cost of the volume. To the more general reader, this work must be more interesting than the freshest novel can be—so various and thrilling are its incidental portrayures of the human heart and life—of our criminal laws, and their hardly more criminal victims. Let it be widely disseminated.

The Appendix gives tables of all capital offences by the laws of the several States and the code of Moses, respectively, and must be valuable to lawyers and others.

[FROM THE BAY STATE DEMOCRAT, OF BOSTON.]

The subject is most ably treated upon by the author, who has condensed into a book of about 250 pages much valuable information of a highly interesting character.

Mr. Spear gives many pertinent extracts from high authorities to sustain his benevolent views, and among others we notice a very interesting quotation from a speech made by O’Connell before the London meeting for the diffusion of information upon the subject of Capital Punishment.

[FROM THE BOSTON OLIVE BRANCH.]

With Mr. Spear’s benevolent views we most heartily accord, and we feel fully assured that he has done the public a great service, not only in his own reasoning, but also in the many pertinent extracts which he has made from high authorities, on this important subject. We hope the work will be extensively read and its principles carried out.

[FROM THE BOSTON BEE.]

This is a work that evidences the devotion of no little time, labor and thought, to its composition; is written in a plain, forcible and logical manner, with an earnestness and clearness of style which show how much the author is impressed with the truth of what he writes, how thoroughly he has given the subject his attention, and how ardently he desires to convince the judgment of his readers. To give completeness to the book, he has annexed to his essays a list of capital offences in the code of the Union and in the codes of the several States; an arrangement that is not to be found in any other work, and one of great service to the reader, by enabling him to turn at any moment to see what is a capital offence in the code of the Union or in either of the twenty-six states of our republic.

Lycæum - Young - Men & Ladies of

Constitution and by Laws.

Object - 'Development and
Truthfulness of Character.'

Means.

1st - Anti Tobacco - anti
Alcohol - anti profanity - anti
every - evil thing.

2nd. Scientific - readings - Lectures
and conversations - etc.

3^d. Social reunions.

cc The quality of Mercy is not the
It-dropt, as the gentle rain from heav
Upon the place beneath; It is true he
It-blesseth him that gives, and from the
" His mightiest in the mightiest; It-see
The throned monarch better than his Crow
His Scepter Shows the force of temporal pow
The attribute to aue and magistly,
Wherein doth sit the dread and feare of the
But-mercy is above this sceptred Sway.
It is an attribute of God himself;
And earthly power doth then show like
When mercy seasons justice."

